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Legislative History – Montana Session Law

Chapter: 465 Session L: 2005

Bill Number: HB 146

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☑
Third Reading Bill	☐
Final Version of Bill	☐

House	**Senate**
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 1/12/2005	Hearing Date(s): 3/09/2005
Committee Report: 1/21/2005	Committee Report: 3/31/2005

Conference Committee – FREE CONFERENCE

Hearing Date(s): 4/14/2005

Conference Committee Report: 4/14/2005

Compiler Notes

Compiled by: SK Marshall

Date: 01/14/2025

Notes:

SK Marshall
Thank You!

AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 12] may be cited as the "Montana False Claims Act".

Section 2. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Section 3. False claims -- procedures -- penalties. (1) A person causing damages in excess of $500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) In a civil action brought under [section 5 or 6], a court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a

criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A private citizen may not file a complaint or civil action:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

Section 4. Limitation of actions. A complaint or civil action may not be filed under [section 5 or 6] more than 3 years after the date on which an official of the governmental entity charged with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever occurs first.

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Section 6. Complaint by private citizen -- civil action. (1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file a complaint with the government attorney that includes a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and complaint, the government attorney may elect to file a civil action and may, for good cause shown, move the court for extensions of the time for filing an action.

(3) If the government attorney files a civil action, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a civil action within the time allowed under subsection (2), the private citizen may file a civil action.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had not intervened.

(5) After a private citizen files a civil action, no other private citizen may file a civil action based on the facts underlying the pending action.

Section 7. Dismissal of private citizen's civil action. On the motion of a government attorney, the court may dismiss a private citizen's civil action for good cause. If an intervening government attorney seeks dismissal of a private citizen's civil action, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present evidence at a hearing.

Section 8. Settlement. An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence

at the settlement hearing.

Section 9. Burden of proof -- effect of criminal conviction. (1) The plaintiff in an action under [section 5 or 6] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section 5 or 6] that involves the same event or events as the criminal proceeding.

Section 10. Distribution of damages and civil penalty. If an action is settled or the governmental entity or private citizen prevails in an action:

(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(2) filed by a private citizen either as plaintiff or as coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 15% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;

(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of the state.

Section 11. Costs and attorney fees. A governmental entity in an action in which its government

attorney filed a civil action or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a civil action and who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

Section 12. Prohibitions on employers -- employee remedies. (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section 5 or 6].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

Section 13. Repealer. Section 17-8-231, MCA, is repealed.

Section 14. Applicability. [This act] applies to causes of action arising after [the effective date of this act].

- END -

I hereby certify that the within bill,
HB 0146, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 146

INTRODUCED BY GALLIK

AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE.

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
04/29/05	Chapter Number Assigned				
04/28/05	(H) Signed by Governor				
04/22/05	(H) Transmitted to Governor				
04/22/05	(S) Signed by President				
04/21/05	(H) Signed by Speaker				
04/20/05	(H) Returned from Enrolling				
04/19/05	(C) Printed - New Version Available				
04/19/05	(H) Sent to Enrolling				
04/18/05	(H) 3rd Reading Free Conference Committee Report Adopted		50	49	
04/18/05	(H) Reconsidered Previous Act; Remains in 3rd Read FCC Process		50	49	
04/16/05	(S) 3rd Reading Free Conference Committee Report Adopted		46	4	
04/16/05	(H) 3rd Reading Free Conference Committee Report Rejected		50	50	
04/16/05	(H) On Motion Rules Suspended				
04/16/05	(H) 2nd Reading Free Conference Committee Report Adopted		50	49	
04/16/05	(S) Scheduled for 3rd Reading				
04/16/05	(H) Scheduled for 2nd Reading				
04/15/05	(S) 2nd Reading Free Conference committee Report Adopted on Voice Vote		50	0	
04/15/05	(S) Scheduled for 2nd Reading				
04/14/05	(S) Free Conference Committee Report Received	(S) Free Conference			
04/14/05	(H) Free Conference Committee Report Received	(H) Free Conference			
04/14/05	(S) Hearing	(S) Free Conference			
04/12/05	(S) Free Conference Committee Appointed	(S) Free Conference			
04/11/05	(H) Free Conference Committee Appointed	(H) Free Conference			
04/11/05	(H) 2nd Reading Senate Amendments Not Concurred		93	6	
04/11/05	(H) Scheduled for 2nd Reading				
04/06/05	(S) Returned to House with Amendments				
04/06/05	(S) 3rd Reading Concurred		44	6	
04/06/05	(S) Scheduled for 3rd Reading				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
04/05/05	(S) 2nd Reading Concurred		33	13	
04/05/05	(S) Scheduled for 2nd Reading				
04/05/05	(S) Scheduled for 2nd Reading				
04/04/05	(S) Scheduled for 2nd Reading				
03/31/05	(C) Printed - New Version Available				
03/31/05	(S) Committee Report--Bill Concurred as Amended	(S) Judiciary			
03/31/05	(S) Committee Executive Action--Bill Concurred as Amended	(S) Judiciary	9	3	
03/09/05	(S) Hearing	(S) Judiciary			
02/21/05	(S) Referred to Committee	(S) Judiciary			
02/21/05	(S) First Reading				
01/26/05	(H) Transmitted to Senate				
01/26/05	(H) 3rd Reading Passed		80	20	
01/26/05	(H) Scheduled for 3rd Reading				
01/25/05	(H) 2nd Reading Passed		79	21	
01/25/05	(H) Scheduled for 2nd Reading				
01/22/05	(C) Printed - New Version Available				
01/22/05	(H) Committee Report--Bill Passed as Amended	(H) Judiciary			
01/21/05	(H) Committee Executive Action--Bill Passed as Amended	(H) Judiciary	18	0	
01/12/05	(H) Hearing	(H) Judiciary			
01/11/05	(H) Fiscal Note Printed				
01/10/05	(H) Fiscal Note Received				
01/05/05	(H) Referred to Committee	(H) Judiciary			
12/23/04	(H) Fiscal Note Requested				
12/20/04	(C) Introduced Bill Text Available Electronically				
12/20/04	(H) Introduced				
12/08/04	(C) Pre-Introduction Letter Sent				
12/07/04	(C) Draft in Assembly/Executive Director Review				
12/03/04	(C) Bill Draft Text Available Electronically				
12/03/04	(C) Draft in Input/Proofing				
12/02/04	(C) Draft to Drafter - Edit Review				
12/01/04	(C) Draft in Edit				
12/01/04	(C) Draft in Legal Review				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
11/16/04	(C) Draft to Requester for Review				
11/15/04	(C) Draft Request Received				

FISCAL NOTE

Bill #: HB0146 **Title:** Civil false claims act

Primary Sponsor: Gallik, D **Status:** As Introduced

Sponsor signature Date David Ewer, Budget Director Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
General Fund	$0	$0
Revenue:		
General Fund	$0	$0
Net Impact on General Fund Balance:	$0	0

☐	Significant Local Gov. Impact	☒	Technical Concerns
☐	Included in the Executive Budget	☐	Significant Long-Term Impacts
☐	Dedicated Revenue Form Attached	☐	Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Judiciary

1. This bill expands the definition of governmental entity for false claim actions and increases the penalties to $10,000. The legislation may increase District Court caseloads but the Judicial Branch is unable to estimate the impact on judicial workload or the fiscal impact. The cumulative impact of such legislation may over a period of time require additional judicial resources since the court dockets are already full throughout the state.

Department of Labor and Industry

2. HB 146 provides for a civil action against a person making a false claim against a governmental entity.
3. There is a possibility of HB 146 actions arising out of the unemployment insurance program (benefits and taxes) or the uninsured employers' fund (benefits, fraud penalties, and reimbursement).
4. The department assumes that demands for investigative services (wage and hour, human rights, public employee collective bargaining, etc.) do not fall under HB 146.
5. The department will absorb staffing and workload issues within its current budget.

Department of Justice

6. It is impossible to estimate the fiscal impact that HB 146 may have because there is no way to predict with any certainty the number of claims that may be filed, the merits of such claims, and whether or not a government attorney would prosecute such claims.

TECHNICAL NOTES:

Department of Labor and Industry

1. Section 2 of HB 146 broadly defines "claim" as including a demand for services when providing those services is not justified. However, Section 3 specifies that the (false) claim needs to be submitted for payment or approval by the governmental entity. The department is unsure whether presenting an unmeritorious allegation of wrongdoing by a person to an executive branch agency with investigative and/or regulatory duties constitutes a cause of action under Section 3.

Department of Justice

2. HB 146 appears to overlap with the duties of the Legislative Auditors Office set forth in 5-13-304 and 5-13-311, MCA. The bill also potentially overlaps with the duty of the Attorney General set forth in 5-13-310, MCA, to prosecute public offenses involving a state agency.
3. Money recovered as a result of action taken under 5-13-311, MCA, (for fraud, waste, and abuse) must be deposited in the general fund. The Legislative Auditor receives calls on an 800-telephone number and refers any possible case to court, where the money would be collected. Although HB 146 could divert money from the general fund to private citizens, any amounts collected to date are inconsequential.
4. The protections for employees who cooperate in the disclosure of false claims in section 12(2) are in many respects duplicative of the protections already found in other provisions of state law, particularly in the Wrongful Discharge from Employment Act, which already prohibits discharge without cause. The WDEA provides remedies that are significantly more limited than those provided in the bill. The differences can be found be comparing this bill Section 12(3) with 39-2-905, MCA.

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(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

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(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of the state.

Section 11. Costs and attorney fees. A governmental entity in an action in which its government

attorney filed a civil action or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a civil action and who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

Section 12. Prohibitions on employers -- employee remedies. (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section 5 or 6].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

Section 13. Repealer. Section 17-8-231, MCA, is repealed.

Section 14. Applicability. [This act] applies to causes of action arising after [the effective date of this act].

- END -

I hereby certify that the within bill,
HB 0146, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 146

INTRODUCED BY GALLIK

AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE.

HOUSE BILL NO. 146

INTRODUCED BY GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; ~~REPEALING SECTION 17-8-231, MCA;~~ REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Montana False Claims Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited

liability company, business, or trust.

NEW SECTION. **Section 3. ~~Causes of action~~ FALSE CLAIMS -- PROCEDURES -- PENALTIES.** (1) A person causing damages in excess of $500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity OR ITS CONTRACTORS; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) ~~A~~ IN A CIVIL ACTION BROUGHT UNDER [SECTION 5 OR 6], A court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A private citizen ~~or governmental entity~~ may not file a complaint OR CIVIL ACTION:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee ~~related to the officer's or employee's service~~ WITHIN THE SCOPE OF THE OFFICER'S OR EMPLOYEE'S DUTIES to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint OR CIVIL ACTION, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint OR CIVIL ACTION and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

NEW SECTION. **Section 4. Limitation of actions.** ~~An~~ A COMPLAINT OR CIVIL action may not be filed under [section ~~3~~ 5 OR 6] more than 3 years after the date on which an official of the governmental entity charged with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the

act occurred, whichever occurs first.

NEW SECTION. **Section 5. Investigation and ~~complaint~~ CIVIL ACTION by government attorney.** A government attorney may investigate an alleged violation of [SECTION 3] and file a ~~complaint under [section 3]~~ CIVIL ACTION.

NEW SECTION. **Section 6. Complaint by private citizen -- CIVIL ACTION.** (1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file A COMPLAINT with the government attorney ~~a brief, including~~ THAT INCLUDES a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and ~~brief~~ COMPLAINT, the government attorney may elect to file a ~~complaint under [sections 3 and 5]~~ CIVIL ACTION and may, for good cause shown, move the court for extensions of the time for filing ~~a complaint~~ AN ACTION.

(3) If the government attorney files a ~~complaint~~ CIVIL ACTION, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a ~~complaint~~ CIVIL ACTION within the time allowed under subsection (2), the private citizen may file a ~~complaint~~ CIVIL ACTION.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had not intervened.

(5) After a private citizen files a ~~complaint~~ CIVIL ACTION, no other private citizen may file a ~~complaint~~ CIVIL ACTION based on the facts underlying the pending action.

NEW SECTION. **Section 7. Dismissal of private citizen's ~~complaint~~ CIVIL ACTION.** On the motion of a government attorney, the court may dismiss a private citizen's ~~complaint~~ CIVIL ACTION for good cause. If an intervening government attorney seeks dismissal of a private citizen's ~~complaint~~ CIVIL ACTION, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present evidence at a hearing.

NEW SECTION. **Section 8. Settlement.** An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence at the settlement hearing.

NEW SECTION. **Section 9. Burden of proof -- effect of criminal conviction.** (1) The plaintiff in an action under [section ~~3~~ 5 OR 6] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section ~~3~~ 5 OR 6] that involves the same event or events as the criminal proceeding.

NEW SECTION. **Section 10. Distribution of damages and civil penalty.** If an action is settled or the governmental entity OR PRIVATE CITIZEN prevails in an action:

(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(2) filed by a private citizen EITHER AS PLAINTIFF OR AS COPLAINTIFF, except as provided in subsection (3), the private citizen is entitled to between ~~25%~~ 15% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;

(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(5) UNLESS OTHERWISE PROVIDED, THE REMEDIES OR PENALTIES PROVIDED BY [SECTIONS 1 THROUGH 12] ARE CUMULATIVE TO EACH OTHER AND TO THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THE STATE.

NEW SECTION. **Section 11. Costs and attorney fees.** A governmental entity in an action in which its government attorney filed a ~~complaint~~ CIVIL ACTION or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a ~~complaint~~ CIVIL ACTION and who prevails in an action that is not settled ~~and that the court finds was clearly frivolous or brought solely for harassment purposes~~ AND THAT THE COURT FINDS WAS CLEARLY FRIVOLOUS OR BROUGHT SOLELY FOR HARASSMENT PURPOSES is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

NEW SECTION. **Section 12. Prohibitions on employers -- employee remedies.** (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section ~~3~~ 5 OR 6].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

~~NEW SECTION. **Section 13. Repealer.** Section 17-8-231, MCA, is repealed.~~

NEW SECTION. **SECTION 13. REPEALER.** SECTION 17-8-231, MCA, IS REPEALED.

NEW SECTION. **Section 14. Applicability.** [This act] applies to causes of action arising after [the effective date of this act].

- END -

HOUSE BILL NO. 146

INTRODUCED BY GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; ~~REPEALING SECTION 17-8-231, MCA;~~ REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Montana False Claims Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited

liability company, business, or trust.

NEW SECTION. **Section 3. ~~Causes of action~~ FALSE CLAIMS -- PROCEDURES -- PENALTIES.** (1) A person causing damages in excess of $500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) ~~A~~ IN A CIVIL ACTION BROUGHT UNDER [SECTION 5 OR 6], A court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A private citizen or governmental entity may not file a complaint OR CIVIL ACTION:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee related to the officer's or employee's service to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint OR CIVIL ACTION, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint OR CIVIL ACTION and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

NEW SECTION. **Section 4. Limitation of actions.** ~~An~~ A COMPLAINT OR CIVIL action may not be filed under [section ~~3~~ 5 OR 6] more than 3 years after the date on which an official of the governmental entity charged with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever occurs first.

NEW SECTION. **Section 5. Investigation and ~~complaint~~ CIVIL ACTION by government attorney.** A government attorney may investigate an alleged violation of [SECTION 3] and file a ~~complaint under [section 3]~~ CIVIL ACTION.

NEW SECTION. **Section 6. Complaint by private citizen -- CIVIL ACTION.** (1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file A COMPLAINT with the government attorney ~~a brief, including~~ THAT INCLUDES a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and ~~brief~~ COMPLAINT, the government attorney may elect to file a ~~complaint under [sections 3 and 5]~~ CIVIL ACTION and may, for good cause shown, move the court for extensions of the time for filing ~~a complaint~~ AN ACTION.

(3) If the government attorney files a ~~complaint~~ CIVIL ACTION, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a ~~complaint~~ CIVIL ACTION within the time allowed under subsection (2), the private citizen may file a ~~complaint~~ CIVIL ACTION.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had not intervened.

(5) After a private citizen files a ~~complaint~~ CIVIL ACTION, no other private citizen may file a ~~complaint~~ CIVIL ACTION based on the facts underlying the pending action.

NEW SECTION. **Section 7. Dismissal of private citizen's ~~complaint~~ CIVIL ACTION.** On the motion of a government attorney, the court may dismiss a private citizen's ~~complaint~~ CIVIL ACTION for good cause. If an intervening government attorney seeks dismissal of a private citizen's ~~complaint~~ CIVIL ACTION, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present evidence at a hearing.

NEW SECTION. **Section 8. Settlement.** An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's

action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence at the settlement hearing.

NEW SECTION. **Section 9. Burden of proof -- effect of criminal conviction.** (1) The plaintiff in an action under [section ~~3~~ 5 OR 6] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section ~~3~~ 5 OR 6] that involves the same event or events as the criminal proceeding.

NEW SECTION. **Section 10. Distribution of damages and civil penalty.** If an action is settled or the governmental entity OR PRIVATE CITIZEN prevails in an action:

(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(2) filed by a private citizen, except as provided in subsection (3), the private citizen is entitled to between 25% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;

(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(5) UNLESS OTHERWISE PROVIDED, THE REMEDIES OR PENALTIES PROVIDED BY [SECTIONS 1 THROUGH 12] ARE CUMULATIVE TO EACH OTHER AND TO THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THE STATE.

NEW SECTION. **Section 11. Costs and attorney fees.** A governmental entity in an action in which

its government attorney filed a ~~complaint~~ CIVIL ACTION or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a ~~complaint~~ CIVIL ACTION and who prevails in an action that is not settled ~~and that the court finds was clearly frivolous or brought solely for harassment purposes~~ AND THAT THE COURT FINDS WAS CLEARLY FRIVOLOUS OR BROUGHT SOLELY FOR HARASSMENT PURPOSES is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

NEW SECTION. **Section 12. Prohibitions on employers -- employee remedies.** (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section ~~3~~ 5 OR 6].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

~~NEW SECTION. **Section 13. Repealer.** Section 17-8-231, MCA, is repealed.~~

NEW SECTION. **SECTION 13. REPEALER.** SECTION 17-8-231, MCA, IS REPEALED.

NEW SECTION. **Section 14. Applicability.** [This act] applies to causes of action arising after [the effective date of this act].

- END -

HOUSE BILL NO. 146

INTRODUCED BY GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; ~~REPEALING SECTION 17-8-231, MCA;~~ AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Montana False Claims Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited

liability company, business, or trust.

NEW SECTION. **Section 3. Causes of action.** (1) A person causing damages in excess of $500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) A court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a

criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A private citizen or governmental entity may not file a complaint:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee related to the officer's or employee's service to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

NEW SECTION. **Section 4. Limitation of actions.** An action may not be filed under [section 3] more than 3 years after the date on which an official of the governmental entity charged with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever occurs first.

NEW SECTION. **Section 5. Investigation and complaint by government attorney.** A government

attorney may investigate an alleged violation of and file a complaint under [section 3].

NEW SECTION. **Section 6. Complaint by private citizen.** (1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file with the government attorney a brief, including a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and brief, the government attorney may elect to file a complaint under [sections 3 and 5] and may, for good cause shown, move the court for extensions of the time for filing a complaint.

(3) If the government attorney files a complaint, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a complaint within the time allowed under subsection (2), the private citizen may file a complaint.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had not intervened.

(5) After a private citizen files a complaint, no other private citizen may file a complaint based on the facts underlying the pending action.

NEW SECTION. **Section 7. Dismissal of private citizen's complaint.** On the motion of a government attorney, the court may dismiss a private citizen's complaint for good cause. If an intervening government attorney seeks dismissal of a private citizen's complaint, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present evidence at a hearing.

NEW SECTION. **Section 8. Settlement.** An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence at the settlement hearing.

NEW SECTION. **Section 9. Burden of proof -- effect of criminal conviction.** (1) The plaintiff in an action under [section 3] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section 3] that involves the same event or events as the criminal proceeding.

NEW SECTION. **Section 10. Distribution of damages and civil penalty.** If an action is settled or the governmental entity prevails in an action:

(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(2) filed by a private citizen, except as provided in subsection (3), the private citizen is entitled to between 25% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;

(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

NEW SECTION. **Section 11. Costs and attorney fees.** A governmental entity in an action in which its government attorney filed a complaint or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a governmental

entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a complaint and who prevails in an action that is not settled ~~and that the court finds was clearly frivolous or brought solely for harassment purposes~~ is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

NEW SECTION. **Section 12. Prohibitions on employers -- employee remedies.** (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section 3].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

~~NEW SECTION. **Section 13. Repealer.** Section 17-8-231, MCA, is repealed.~~

NEW SECTION. **Section 13. Applicability.** [This act] applies to causes of action arising after [the effective date of this act].

- END -

HOUSE BILL NO. 146

INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Montana False Claims Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited

liability company, business, or trust.

NEW SECTION. **Section 3. Causes of action.** (1) A person causing damages in excess of $500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) A court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a

criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A private citizen or governmental entity may not file a complaint:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee related to the officer's or employee's service to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

NEW SECTION. **Section 4. Limitation of actions.** An action may not be filed under [section 3] more than 3 years after the date on which an official of the governmental entity charged with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever occurs first.

NEW SECTION. **Section 5. Investigation and complaint by government attorney.** A government

attorney may investigate an alleged violation of and file a complaint under [section 3].

NEW SECTION. **Section 6. Complaint by private citizen.** (1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file with the government attorney a brief, including a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and brief, the government attorney may elect to file a complaint under [sections 3 and 5] and may, for good cause shown, move the court for extensions of the time for filing a complaint.

(3) If the government attorney files a complaint, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a complaint within the time allowed under subsection (2), the private citizen may file a complaint.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had not intervened.

(5) After a private citizen files a complaint, no other private citizen may file a complaint based on the facts underlying the pending action.

NEW SECTION. **Section 7. Dismissal of private citizen's complaint.** On the motion of a government attorney, the court may dismiss a private citizen's complaint for good cause. If an intervening government attorney seeks dismissal of a private citizen's complaint, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present evidence at a hearing.

NEW SECTION. **Section 8. Settlement.** An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence at the settlement hearing.

NEW SECTION. **Section 9. Burden of proof -- effect of criminal conviction.** (1) The plaintiff in an action under [section 3] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section 3] that involves the same event or events as the criminal proceeding.

NEW SECTION. **Section 10. Distribution of damages and civil penalty.** If an action is settled or the governmental entity prevails in an action:

(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(2) filed by a private citizen, except as provided in subsection (3), the private citizen is entitled to between 25% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;

(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

NEW SECTION. **Section 11. Costs and attorney fees.** A governmental entity in an action in which its government attorney filed a complaint or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a governmental

entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a complaint and who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

NEW SECTION. **Section 12. Prohibitions on employers -- employee remedies.** (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section 3].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

NEW SECTION. **Section 13. Repealer.** Section 17-8-231, MCA, is repealed.

NEW SECTION. **Section 14. Applicability.** [This act] applies to causes of action arising after [the effective date of this act].

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE,** on January 12, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: Rep. Bill Wilson (D)

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: HB 33, HB 146, HB 90, HB 42, 1/5/2005
Executive Action: HB 94-Tabled, HB 95-Tabled
HB 61-Tie Vote

HEARING ON HB 33

REP. DAVE GALLIK, HD 79, HELENA

Opening Statement by Sponsor:

REP. DAVE GALLIK, HD 79, opened the hearing on HB 33, Jury trial for municipal infractions.
{Tape: 1; Side: A; Approx. Time Counter: 0 - 37}

Proponents' Testimony:

Dave Nielsen, Attorney-City of Helena, rose in support of HB 33. He informed the committee that the municipal infraction bill was passed in 1999. This provided cities with the tool to decriminalize some lesser offenses.
{Tape: 1; Side: A; Approx. Time Counter: 37 - 55}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. WARD, CLARK, STOKER, NOONAN, NOENNIG and **RICE** posed questions to **REP. GALLIK** and **Mr. Nielsen.** Among their questions were: "Has this not existed to expedite actions in lower courts, would there be increased costs to the court system and if defendants were found guilty would they pay the court costs?" **Mr. Neilsen** answered questions regarding "barking dog" ordinances; if jury trials would be an option for that offense. He also explained city ordinances and misdemeanors. **REP. GALLIK** answered further questions: 1)"If a local municipality does not want those types of infractions, would they be required to; 2)is it up to each local municipality to decide; 3)and whether this bill would be an 'unfunded mandate'."

CHAIRMAN RICE queried **Mr. Neilsen** about a situation whereby an individual receives a judicial decision in either JP or municipal court and that person is dissatisfied with that decision; "Could that person appeal to a higher court and receive a jury trial?" **Mr. Neilsen** answered: "If you do an appeal from a city (municipal) court under the municipal infraction, you do not get a new jury trial at the district court, it is based on the record."

CHAIRMAN RICE further asked **Mr. Neilsen** if the Helena smoking ban ordinance would fall under this; and what the penalty os that is laid out for those violations. **Mr. Neilsen** responded by saying that it was in Helena's smoking case in which the city court ruled that the municipal infraction statute unconstitutionally deprived the offender of a jury trial. The penalty was $100.
{Tape: 1; Side: A; Approx. Time Counter: 55 - 399}

Closing by Sponsor:

REP. GALLIK closed the hearing on HB 33 and suggested to the committee that the this statute should be adopted. That, should a local municipality decide to treat a misdemeanor as a municipal infraction; the process should be the same.
{Tape: 1; Side: A; Approx. Time Counter: 399 - 438}

HEARING ON HB 146

REP. DAVE GALLIK, HD 79, HELENA

Opening Statement by Sponsor:

REP. DAVE GALLIK HD 79, opened the hearing on HB 146, Civil false claims act. **REP, GALLIK** informed the committee this bill is identical to legislation in 2003 which was brought before this committee, he went further and explained the nuances of this bill to committee members.
{Tape: 1; Side: A; Approx. Time Counter: 438 - 500}
{Tape: 1; Side: B; Approx. Time Counter: 0 - 90}

Proponents' Testimony:

Al Smith, Montana Trial Lawyers Association, rose in support of this bill and stated to committee members that in essence this is privatization of watchdogs.
{Tape: 1; Side: B; Approx. Time Counter: 90 - 119}

Ali Bovington, Montana Assistant Attorney General, rose in support of HB 146. She stated that this bill would provide another avenue of relief for state government to recover funds and that it mirrors federal law.
{Tape: 1; Side: B; Approx. Time Counter: 119 - 136}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. EVERETT, HARRIS, KOOPMAN, NOENNIG and **MCGILLVRAY** questioned the sponsor of this bill extensively. The questions included were: 1) whether each agency has its own way of dealing with false claims; 2) whether or not current and/or retired employees could qualify for these "finders fees;" 3) the different percentages awarded to the recipients; private citizens vs. private entities; 4) the federal law and percentages given vs. state and frivolous; as well as numerous and false claims that were made. **REP. GALLIK** responded to the "finder's fee" question specifically and stated there is a concern with government that when employees in a effort to collect these fees, employees may not do their "regular" job.l
{Tape: 1; Side: B; Approx. Time Counter: 136 - 446}

Closing by Sponsor:
REP. GALLIK closed the hearing on HB 146.
{Tape: 1; Side: B; Approx. Time Counter: 446 - 500}

HEARING ON HB 90

REP. CHRISTINE KAUFMANN, HD 81, HELENA

Opening Statement by Sponsor:

REP. CHRISTINE KAUFMANN, HD 81, opened the hearing on HB 90, Extend domestic violence fatality review commission.
EXHIBIT(juh08a01)
{Tape: 2; Side: A; Approx. Time Counter: 0 - 61}

Proponents' Testimony:
Ali Bovington, Montana Assistant Attorney General, rose in support of HB 90. **Ms. Bovington** informed the committee that this commission was started in 2003 by the legislature. The purpose of this review commission is not to find the fault but to review what could have been done to prevent this incident, what agencies were involved and what could have helped the victim and offender to prevent this tragedy from ever occurring. She also stated this commission is funded by a $10,000 grant through the Violence Against Women Act funded by the federal government.
EXHIBIT(juh08a02)
{Tape: 2; Side: A; Approx. Time Counter: 61 - 104}

Matt Dale, Montana Office of Victims Services, handed out copies of the report that highlights the work that the review commission is doing. **Mr. Dale** informed the committee that Montana is one of 35 states that have these commissions. Montana has received national recognition for this commission's work. The "team" goes to communities and works with the local law enforcement agencies, the child protective services and any other agencies connected with the parties involved.
EXHIBIT(juh08a03)
{Tape: 2; Side: A; Approx. Time Counter: 104 - 160}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, stated that the work of this commission can help the systems in place and save lives.
{Tape: 2; Side: A; Approx. Time Counter: 160 - 168}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. MCGILLVRAY, KOOPMAN, WARD, GUTSCHE, STOKER, HARRIS and **RICE** questioned **REP. KAUFMANN** and **Mr. Dale** extensively regarding the necessity of this commission, the funding coming from a taxpayer at the federal level, if the commission's recommendations are being implemented, if members of the commission receive pay for their work, whom the commission reports their findings to and what criterion does the commission use in choosing the cases they review. The representatives continued their questions regarding number of fatalities, why doesn't the commission fix blame on the parties that may have not done their jobs, is there a "danger assessment" and how is that information distributed to various agencies who may become involved.
{Tape: 2; Side: A; Approx. Time Counter: 168 - 436}

Closing by Sponsor:

REP. KAUFMANN closed the hearing on HB 90.
{Tape: 2; Side: A; Approx. Time Counter: 436 - 500}

HEARING ON HB 42

REP. WAYNE STAHL, HD 35, SACO

Opening Statement by Sponsor: **REP. WAYNE STAHL, HD 35,** opened the hearing on HB 42, Costs and attorney fees awarded for adoption of invalid administrative rule. **REP. STAHL** informed the committee that this bill is simple; it changes the word "may" to "shall" in the statute.
EXHIBIT(juh08a04)
{Tape: 2; Side: B; Approx. Time Counter: 0 - 35}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. HARRIS, NOONAN, KOOPMAN, BECKER, CLARK, WARD, NOENNIG and **LANGE** asked numerous questions of the sponsor. Some of the questions were: 1) the lack of clarity in the new section; and 2) if there were cases where the judgement should not be awarded; if so would that be at the discretion of judges; and would this result in fewer court cases.

When **REP. HARRIS** was questioning **REP. STAHL,** he was very interested in statements made regarding agencies not following regulations and stated that he would like specific examples of the agencies making their own rules and regulations. Additional questions were posed to the sponsor regarding payments, attorneys' fees, compliance and that existing statutes have a high bar to prove "arbitrary and capricious" language.
{Tape: 2; Side: B; Approx. Time Counter: 35 - 490}

Closing by Sponsor:

REP. STAHL closed the hearing on HB 42.
{Tape: 2; Side: B; Approx. Time Counter: 490 - 500}

EXECUTIVE ACTION ON HB 61

Motion: **REP. LANGE moved that HB 61 DO PASS.**

Discussion:

REP. KOOPMAN spoke in support of this bill. It will keep insurance rates down; it is a positive for the recreation industry; and will reduce threats of lawsuits. **REP. KOOPMAN** informed the committee that he had spoken with **Senator Grant Larson** from **Wyoming** whose state has an "inherent risk" statute currently. **Senator Larson** stated: "This legislation has had a profound effect; I would call it a very, very successful legislation, the net effect is to reduce frivolous lawsuits."

REP. HARRIS questioned **REP. KOOPMAN** regarding frivolous lawsuits and the number filed in Montana. He inquired how this bill would affect recreational activities in Montana; about the example **REP. KOOPMAN** made regarding water sports; and that Section 4 would not apply.

REP. NOENNIG questioned **REP. KOOPMAN** regarding the conversation he had with the Senator from Wyoming and if he was confident that the two of them were talking about the same type of bill; i.e., percentage responsibility assessment between recreationalists and the operator. That provision is not in this bill. It is used with comparative negligence lawsuits; this bill is an inherent risk bill.
REP. KOOPMAN assured **REP. NOENNIG** that he and the Senator were talking about the same type of bill. The representative stated that there is a principle here that would be visited upon by the jury and/or the judge.
{Tape: 3; Side: A; Approx. Time Counter: 0 - 178}

REP. NOENNIG then informed the committee members that he had spoken to Ms. Knutsen in Alaska; the woman who had testified via a phone on the day of the hearing. The representative inquired of Ms. Knutsen whether insurance's rates had dropped, discussed the statute and whether any new thing is created in the law to change the insurance and liability climate.

Motion: **REP. NOENNIG MOVED that HB 61 BE AMENDED WITH THE 61-03 AMENDMENT.**
EXHIBIT(juh08a05)

Discussion:

REP. NOENNIG explained the amendment (Page 2, Line 12) to the other committee members. **REPS. WARD, LANGE, CLARK, GUTSCHE** discussed the amendment and its ramifications.
{Tape: 3; Side: A; Approx. Time Counter: 178 - 386}

REP. LANGE called for the "question" however; **REP. CLARK** wanted to segregate a portion of the amendment.

Therefore, Section 4 was discussed as to the removal of Section 4. **Mr. MacMaster** explained to the committee that the first three amendments in 61-03 are clean up amendments that must be made if adoption of a substantive amendment (Sections 4-6). **Mr. MacMaster** suggested the committee allow him to make the changes in the titles of bills if substantive amendments are to be adopted and the title needs to be changed.

(REP. LANGE withdrew his motion "for the question")

Motion/Vote: **REP. CLARK MOVED to SEGREGATE SECTIONS 4-6 FROM 61-03 AMENDMENT. Motion failed 9-9 by roll call vote. REPS. STOKER, BECKER, DRISCOLL, EVERETT, HARRIS, MCGILLVRAY, NOENNIG, WARD and WINDHAM voted aye.**
(VOTING BY PROXY VOTES WERE REPS. PARKER AND WILSON)
{Tape: 3; Side: A; Approx. Time Counter: 386 - 500}
{Tape: 3; Side: B; Approx. Time Counter: 0 - 38}

Motion/Vote: **REP. NOENNIG MOVED to SEGREGATE SECTIONS 5-7 FROM 61-03 AMENDMENT. Motion carried 14-4 by roll call vote with REPS. GUTSCHE, NOONAN, PARKER, and WARD voting no.**
(VOTING BY PROXY VOTES WERE REPS. PARKER AND WILSON)

Motion: **REP. NOENNIG moved that HB 61 DO PASS AS AMENDED.**

Motion: **REP. LANGE MOVED that HB 61 BE AMENDED with 61-01 AMENDMENT.**

Discussion:
CHAIRMAN RICE and Mr. MacMaster explained to committee members that this amendment is in reference to amendment 61-01 that is the sponsor's amendment.

Vote: **Motion carried unanimously by voice vote.**

Motion: **REP. KOOPMAN MOVED that HB 61 BE AMENDED WITH 61-02 AMENDMENT.**
EXHIBIT(juh08a06)

REP. KOOPMAN informed the committee that the sponsor referred to this as a "friendly amendment," he further explained the amendment.

Discussion:

REPS. BECKER, WARD, HARRIS, CLARK, KOOPMAN and **SONJU** discussed the amendment as to the target range and shooting language contained in the amendment.

Vote: Motion carried 10-8 by roll call vote with REPS. BECKER, CLARK, DRISCOLL, GUTSCHE, HARRIS, PARKER, WILSON, and WINDHAM voting no.
(VOTING BY PROXY WERE REPS. LANGE, NOENNIG, PARKER AND WILSON.)

(REP. LANGE RETURNED TO THE COMMITTEE HEARING)

Motion: REP. LANGE moved that HB 61 DO PASS AS AMENDED.

Discussion:

REPS. HARRIS, NOONAN, KOOPMAN, GUTSCHE, CLARK and **Mr. MacMaster** discussed the bill in its entirety.

Vote: Motion failed 9-9 by roll call vote with REPS. STOKER, EVERETT, KOOPMAN, LANGE, MCGILLVRAY, NOENNIG, SONJU, WARD and **RICE voting aye.**
(VOTING BY PROXY WERE REPS. PARKER AND WILSON.)
{Tape: 3; Side: B; Approx. Time Counter: 38 - 500}
{Tape: 4; Side: A; Approx. Time Counter: 0 - 45}

EXECUTIVE ACTION ON HB 94

Motion: REP. STOKER moved that HB 94 DO PASS.

Substitute Motion/Vote: REP. GUTSCHE moved that HB 94 BE TABLED. Motion carried 10-8 by roll call vote with REPS. EVERETT, KOOPMAN, LANGE, MCGILLVRAY, RICE, SONJU, STOKER, and WARD voting no.
VOTING BY PROXY WERE REPS. DRISCOLL, LANGE, PARKER AND WILSON.)
{Tape: 4; Side: A; Approx. Time Counter: 45 - 70}

EXECUTIVE ACTION ON HB 95

Motion: REP. KOOPMAN moved that HB 95 DO PASS.

Substitute Motion/Vote: REP. NOONAN moved that HB 95 BE TABLED. Motion carried 11-7 by roll call vote with REPS. EVERETT, KOOPMAN, LANGE, MCGILLVRAY, RICE, SONJU, and STOKER voting no. (VOTING BY PROXY WERE REPS. PARKER AND WILSON.)
{Tape: 4; Side: A; Approx. Time Counter: 70 - 95}

ADJOURNMENT

Adjournment: 11:45 A.M.

_____
REP. DIANE RICE, Chairman

_____
PAM SCHINDLER, Secretary

DR/PS

Additional Exhibits:

EXHIBIT(juh08aad0.PDF)

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/12/05

NAME	PRESENT	ABSENT	EXCUSED
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON		X	
REP. JEANNE WINDHAM	X		

COMMITTEE FILE COPY

TABLED BILL

The **HOUSE JUDICIARY COMMITTEE** TABLED **HB 94, HB 95**, by motion, on **Wednesday, January 12, 2005**.

PSchindler
(For the Committee)

jbn
(Chief Clerk of the House)

12:20 1/12
(Time) (Date)

January 12, 2005 Pamela E. Schindler, Secretary Phone: 444-4838

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/12/05 BILL NO HB61 MOTION NO. 3 1
MOTION:

Amendment 61-03 Section 4 & 6

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR		X	
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE		X	
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN		X	
REP. MIKE LANGE		X	
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		[redacted]
REP. ART NOONAN		X	
REP. JOHN PARKER		X	X
REP. JON SONJU		X	
REP. JOHN WARD	X		
REP. BILL WILSON		X	X
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR		X	

9/9

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/12/05 BILL NO HB61 MOTION NO. 2
MOTION: Amend 61-03 Sect. 5-7

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE		X	
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN		X	
REP. JOHN PARKER		X	X
REP. JON SONJU	X		
REP. JOHN WARD		X	
REP. BILL WILSON	X		X
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR	X		

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/12/05 BILL NO HB61 MOTION NO. 3
MOTION: Amendment 61-02

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER		X	
REP. PAUL CLARK, VICE CHAIR		X	
REP. ROBYN DRISCOLL		X	
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE		X	
REP. CHRISTOPHER HARRIS		X	
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		X
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		X
REP. ART NOONAN	X		
REP. JOHN PARKER		X	X
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON		X	X
REP. JEANNE WINDHAM		X	
REP. DIANE RICE, CHAIR	X		

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/12/05 BILL NO 61 MOTION NO. 3 4
MOTION: Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER		X	
REP. PAUL CLARK, VICE CHAIR		X	
REP. ROBYN DRISCOLL		X	
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE		X	
REP. CHRISTOPHER HARRIS		X	
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN		X	
REP. JOHN PARKER		X	X
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON		X	X
REP. JEANNE WINDHAM		X	
REP. DIANE RICE, CHAIR	X		

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/12/05 BILL NO HB 95 MOTION NO. 1
MOTION: Substitute - TABLE

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR		X	
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT		X	
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN		X	
REP. MIKE LANGE		X	
REP. TOM McGILLVRAY		X	
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		X
REP. JON SONJU		X	
REP. JOHN WARD	X		
REP. BILL WILSON	X		X
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR		X	

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COMMITTEE PROXY

DATE: 1/12/2005

I request to be excused from the H. Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Ken Sloter.

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 161 as Amended	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep./Sen. _____
(Signature)

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COMMITTEE PROXY

DATE: 1/12/2005

I request to be excused from the H. Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Pam Stokes.

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
Table HB 94		X
Is one of these hanging? If not where is his proxy form for HB 94		

SENATE BILL/AMENDMENT	AYE	NO

Rep./Sen. _____ (Signature)

S:\PROXY 2005.wpd

COMMITTEE PROXY

DATE: 1/12/2005

I request to be excused from the H Judiciary Committee because of other commitments. I desire to leave my proxy vote with: Rep Stokes.

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 94 Table		X

SENATE BILL/AMENDMENT	AYE	NO

who? Not noted on roll call vote from Sen

Rep./Sen. [signature]
(Signature)

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COMMITTEE PROXY

DATE: 1/12/2005

I request to be excused from the H. Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Dan Sloan.

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 6150 as amended	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep./Sen. Mark E. Norris

(Signature)

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COMMITTEE PROXY

DATE: 1/12/05

I request to be excused from the Judiciary Committee

Committee because of other commitments. I desire to leave my proxy vote with:

Rep Paul "Trout Creek" Clark

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 006103.ajm (4), (6)		✓
HB 006103.ajm (5), (7)	✓	
HB 006101.ajm	✓	
HB 006102.ajm		✓
1/12 HB 61		✓
HB 94 Motion to Table	✓	
HB 95 Motion to table	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep./Sen. Bill Wilson
(Signature)

Phone 868-2384 (cell)

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COMMITTEE PROXY

DATE: 1/12/05

I request to be excused from the JUDICIARY

Committee because of other commitments. I desire to leave my proxy vote with:

Rep. Paul Clark

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 006103.0jm (4) (6)		✓
HB 006103 0jm (5) (7)		✓
HB 006101.0jm	✓	
HB 006102.0jm		✓
HB 61		✓
HB 94 Table motion	✓	
HB 95 Table motion	✓	

SENATE BILL/AMENDMENT	AYE	NO

1/12

Rep./Sen. John Parker
(Signature)

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COMMITTEE PROXY

DATE: 1/12/05

I request to be excused from the Judiciary Committee

Committee because of other commitments. I desire to leave my proxy vote with:

Rep Paul Clark

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

1/12

HOUSE BILL/AMENDMENT	AYE	NO
HB 94 motion to table	✓	
~~HB 95 Motion to Pass~~		

SENATE BILL/AMENDMENT	AYE	NO

Rep./Sen. Robin Driscoll
(Signature)

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Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-12-05

Bill No. HB-146 **Sponsor(s)** Rep D Gallik

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Ali Bovington	Atty Gen'l's office	X		
Al Smith	MTLA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-12-05

Bill No. HB-90 **Sponsor(s)** Rep C Kaufmann

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Matthew Dale	DoJ	X		
Ali Bumgarner	Atty Gen'l's Office	X		
Kate Cholewa	MEDSU	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-12-05

Bill No. HB-42 **Sponsor(s)** Rep W Stahl

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-12-05

Bill No. HB-33 **Sponsor(s)** Rep D Gallik

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
David Nielsen	Helena	X		
DOUG NIELE 37-D STONEY BROOK DR. CLANCY, MT 59634	SELF		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

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EXHIBIT
DATE 2/2/05
HB 146

Amendments to House Bill No. 146
1st Reading Copy

Requested by Representative Tom McGillvray

For the House Judiciary Committee

Prepared by John MacMaster
January 18, 2005 (1:23pm)

1. Page 6, line 12 through line 13.
Strike: "and that" on line 12 through "purposes" on line 13

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 21, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 257, HB 264, HB 267, HB 280, HB 285, 1/14/2005
Executive Action:	HB 257-Do Pass, HB 264-Do Pass, HB 40-Do Pass; HB 146-Do Pass As Amended

HEARING ON HB 285

REP. JANNA TAYLOR, HD 11, DAYTON

Opening Statement by Sponsor:

REP. JANNA TAYLOR (R), HD 11, opened the hearing on **HB 285,** Allow domestic violence victims to route mail through Secretary of State. **REP. TAYLOR** submitted to the committee an amendment that would allow the program to transfer from the Secretary of State to the Department of Justice (DOJ).
EXHIBIT(juh16a01)
{Tape: 1; Side: A; Approx. Time Counter: 0 - 76}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General (AG), rose in support of HB 285. **Ms. Bucy** informed the committee members that this program has been in existence since 1985 under the auspices of the Board of Crime Control when it was then transferred to the Attorney General's Office (AG). She stated that 15 other states have similar programs.
{Tape: 1; Side: A; Approx. Time Counter: 76 - 103}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 285. She stated that 16 states have similar statutes that authorize "address confidentiality" services. **Ms. Cholewa** stated that the State of Washington was the first state to create this program in 1991. The population requesting their services is currently 54% children, 41% women and 5% men.

This bill would allow victims to be assigned a "dummy address" by the Attorney General's Office. The mail is received at that substitute address with First Class mail then being forwarded by the Attorney General's Office to the confidential address of the victims.

Ms. Cholewa suggested to the committee that an amendment creating a requirement of Montana residency be addressed.
{Tape: 1; Side: A; Approx. Time Counter: 103 - 138}

Kelsey Young, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 285.
{Tape: 1; Side: A; Approx. Time Counter: 138 - 145}

Michael O'Brien, Chief Deputy of Montana Secretary of State, rose in support and stated that the Secretary of State's Office is in agreement with the amendments that REP. TAYLOR distributed. ***{Tape: 1; Side: A; Approx. Time Counter: 145 - 153}***

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
REP. KOOPMAN posed some questions to the sponsor regarding unintended consequences of having a "secret" address. His concerns were the abuse of the address to avoid debt collectors, etc. **REP. TAYLOR** assured the committee that could not happen as the debt collectors could still find the party through the substitute address.

REP. RICE then addressed Ms. Young as to the possibility of a breakdown in the system with the USPO. **Ms. Young** responded that it is the AG's Office that would change the address. She then stated the ways offenders find the victims; through voter records which are public or by paying a nominal fee to the USPO or government agencies that have "lists."

Ms. Young explained the procedure to the committee members. The victim would sign up with the AG's Office and be given a P.O. Box number that all the victims use. The victim would then have a "family code" identifying said mail. Then all of that victim's mail would go to the AG's Office to be distributed confidentially to them by the AG's Office.

REP. CLARK questioned Ms. Bucy thoroughly about the employee at the AGs Office who is the distributor of the victim's mail. Would that person have a security clearance and what other precautions would be there to insure that there are no breaches in that system. **Ms. Bucy** stated that would not be an issue, anyone who works at the Victims Bureau at the AG's Office already has clearance and certainly the person in charge of this service would be trained with confidentiality being the main issue.

REP. CLARK and **REP. NOENNIG** then questioned Mr. O'Brien regarding the issue of voter registration, by asking how the victim would be able to register to vote if those lists are public.

Mr. O'Brien informed the committee that the issue is resolved between the registrant and the AG's Office. **Ms. Bucy** also

responded that the Montana Secretary of State does not require a physical address to register to vote.

REP. HARRIS voiced his concern about if or when there is a leak in confidentiality; what about the legal exposure. **Ms. Bucy** stated that the Department of Justice would receive the immunity provision set forth in this bill.
{Tape: 1; Side: B; Approx. Time Counter: 0 - 39}

HEARING ON HB 257

REP. GARY BRANAE, HD 54, BILLINGS

Opening Statement by Sponsor:

REP. GARY BRANAE (D), HD 54, opened the hearing on **HB 257,** Revise permissible term for personal service contracts.

Proponents' Testimony:

Kathy Kenyon, Deaconess Billings Clinic, rose in support of HB 257. She gave the example of negotiating contracts with incoming employees at the Clinic for longer terms without those prospective employees knowing of the two-year contract statute.
EXHIBIT(juh16a02)
{Tape: 1; Side: B; Approx. Time Counter: 39 - 100}

Tom Ebzery, St. Vincent Healthcare, rose in support of HB 257 and stated that this bill is a housekeeping measure.
{Tape: 1; Side: B; Approx. Time Counter: 100 - 115}

John Flink, Montana Hospital Association, rose in support of this bill and stated that this is an issue especially for the rural areas of Montana.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG queried Ms. Kenyon regarding the "indentured servitude" attitude that drove the initial bill limiting employment to two years. They also spoke of the un-enforceability issue that the previous statute employs.
{Tape: 1; Side: B; Approx. Time Counter: 115 - 189}
Closing by Sponsor:

REP. BRANAE closed the hearing on HB 285.
{Tape: 1; Side: B; Approx. Time Counter: 189 - 207}

HEARING ON HB 267

REP. RON STOKER, HD 87, DARBY

Opening Statement by Sponsor:

REP. RON STOKER (R), HD 87, opened the hearing on **HB 267,** Convicted person to pay costs of local government after second trial. **REP. STOKER** gave the town of Darby, Montana, as an example of a town with limited jurisdiction that suffers the costs of a trial.

He spoke of the case where someone is charged with misdemeanor DUI and how that person will change his plea from Not Guilty to Guilty with the prospect of appealing the lower ruling to District Court. Supposedly, the District Court judges are more lenient and the chance may occur that the person would receive a smaller penalty.

REP. STOKER explained to the committee that after that trial is completed, the small town of Darby has had to pay for two trials, one prosecutor, one defense attorney and judge. In HB 267, the defendant will be required to pay for the two trials (if found guilty), the town's expenses, and an additional $200 fee.
{Tape: 1; Side: B; Approx. Time Counter: 207 - 299}

Proponents' Testimony:

Harold Blattie, Montana Association of Counties, rose in support of HB 267.
{Tape: 1; Side: B; Approx. Time Counter: 299 - 306}

Alex Hansen, Montana League of Cities and Towns, rose in support of HB 267 and stated that this is one way to help small towns with limited jurisdiction courts.
{Tape: 1; Side: B; Approx. Time Counter: 306 - 335}

REP. GORDON HENDRICK, HD 14, rose in support of HB 267 and informed the committee that as the mayor of Superior, Montana, he understands the costs. He stated that if an offender goes to a second trial, the cost is approximately $2,500 in addition to the defendant's attorney (if appointed), charging $100 an hour to represent the offender.
{Tape: 1; Side: B; Approx. Time Counter: 335 - 372}
Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS questioned the sponsor about the MCA current statute regarding the "guaranteed right to trial by jury" provision. **REP. STOKER** explained to the committee that this bill does not infringe on a person's right to trial by jury. This bill is about changing the attitude of the offender that is of "beating the local small court."

The discussion then ranged from an indigent defendant versus some one with money. The point being that a person who is indigent, if faced with having to pay this extra money, will just plead guilty and suffer those consequences. However, someone with money will still take the chance of pleading not guilty in an effort to try and "beat" the local court.

REP. HARRIS then questioned Ms. Bucy regarding the current system of assessing the costs of jury trials. **Ms. Bucy** replied that the imposition of fines by District Court is being done now, along with Municipal Courts. She also verified the theory that Justice of the Peace Courts and Municipal Courts are "harder" on defendants that District Courts.

REP. CLARK continued the questioning of Ms. Bucy. He asked if indigent defendants do not pay the court costs. The answer was, "Yes." Then he asked, "Do non-indigent defendants pay the court costs?" The answer again was, "Yes." **REP. CLARK** then stated that this could be construed as discrimination against people who have money and so would hinder them. **Ms. Bucy** then stated that the indigent could go for a second trial, "...if have no money, still no big deal."
{Tape: 1; Side: B; Approx. Time Counter: 372 - 500}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 87}

Closing by Sponsor:

REP. STOKER closed the hearing on HB 267 by stating that the lower courts can impose costs presently, however, the money does not go back to the small towns.
{Tape: 2; Side: A; Approx. Time Counter: 87 - 117}

HEARING ON HB 264

REP. JEANNE WINDHAM, HD 12, POLSON

Opening Statement by Sponsor:

REP. JEANNE WINDHAM (D), HD 12, opened the hearing on **HB 264,** Redirect restitution payments to Office victim services. **REP. WINDHAM** informed the committee that the money currently goes into the General Fund with the amount increasing every year. However, the Crime Victims Compensation Program (CVP) runs out of money each year. She further stated that the federal government matches 60% of recovered monies.
{Tape: 2; Side: A; Approx. Time Counter: 117 - 177}

Proponents' Testimony:
Pam Bucy, Assistant Attorney General, rose in support of HB 264. She spoke of the Federal money that is disbursed to the restitution fund.
EXHIBIT(juh16a03)
{Tape: 2; Side: A; Approx. Time Counter: 177 - 218}

Kate Cholwea, Montana Coalition Against Domestic and Sexual Violence, stood in support of HB 264.
{Tape: 2; Side: A; Approx. Time Counter: 218 - 227}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN spoke with Ms. Bucy regarding the "workings" of the Crime Victims Compensation Program. **Ms. Bucy** then referred the line of questions to Cindy Paradis, who is with the Crime Victims Compensation Program.

Ms. Paradis explained how the money is disbursed to the victim for services. When a victim attends counseling, a medical service provider or needs money for utility bills, etc.; CVP examines the claims and if legitimate, pays the claim. At that point, restitution is sought from the offender.

One of the duties of Ms. Paradis, is to follow the offender's case through the court system, tracking when the defendant is able to make payments towards restitution. When any money is received, it is applied towards the defendant's accounts.

Ms. Paradis informed the committee that last year the fund disbursed more than $2 million dollars towards claims.
{Tape: 2; Side: A; Approx. Time Counter: 227 - 390}

Closing by Sponsor:

REP. WINDHAM closed the hearing on HB 264 with a Fiscal Note for this bill.
EXHIBIT(juh16a04)
{Tape: 2; Side: A; Approx. Time Counter: 390 - 418}

HEARING ON HB 280

REP. PAT WAGMAN, HD 62, LIVINGSTON

Opening Statement by Sponsor:

REP. PAT WAGMAN (R), HD 62, opened the hearing on **HB 280,** Revise use of electronic proceedings for district court.
{Tape: 2; Side: A; Approx. Time Counter: 418 - 484}

Proponents' Testimony:
Wayne Phillips, Disctrict Court Judge, Montana Judges Association, rose in support of HB 280. He explained to the committee members the cost-saving measure that this would be. Presently he must travel long distances on a weekly or monthly basis to be present at legal proceedings, thereby incurring traveling expenses of mileage, lodging, meals and, most importantly, time.

Court proceedings could happen on a much more timely basis and without huge expenses incurred by the counties for the equipment.

Judge Phillips did point out some small errors in the language of the bill to the committee members.
{Tape: 2; Side: A; Approx. Time Counter: 484 - 500}
{Tape: 2; Side: B; Approx. Time Counter: 0 - 53}

Mary Phippen, Montana Association of Clerks of District Court, rose in support of HB 280.
{Tape: 2; Side: B; Approx. Time Counter: 53 - 59}

David Martin, Montana Newspaper Association and Lee Enterprises, rose in support of HB 280.
{Tape: 2; Side: B; Approx. Time Counter: 59 - 64}

Opponents' Testimony:

Anita Roessmann, Montana Advocacy Program, rose in opposition to HB 280. Her testimony included information that if the defendant is mentally disabled, that person would not be able to "track" or take in information or assist in their own defense. She also stated that they would not be able to pick up "cues" from any participant in the hearing including their own attorney and would be confused. Another concern that Ms. Roessmann had was to the confidentiality of court proceedings.

Ms. Roessmann's concerns were also about the client's right to object to video/audio hearings, the right to an explanation prior to making a decision regarding the hearing, and the right to speak with counsel. She made a recommendation to the bill that would require advance notice and then informed consent be given by the defendant prior to the hearing.
{Tape: 2; Side: B; Approx. Time Counter: 59 - 173}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked if Judge Phillips would address Ms. Roessmann's concerns.

Judge Phillips stated that the defendant is always allowed "notice" to be given, but would have no problem with adding language that would address that issue. Regarding the issue of the attorney and client privilege, in his courtroom for instance, there is always time for the defendant and the defense counsel to speak. He vacates the courtroom to facilitate that proceeding.

Judge Phillips then addressed the issue of mental capacity and capabilities. He handles 60-70 court proceedings for commitment purposes and does not see the problems Ms. Roessmann speaks of. Special consideration is given for the mentally disabled to make sure they understand what is happening. In his testimony, the Judge explained much of what he does in his courtroom to facilitate the varied proceedings he adjudicates.

He further stated the cost savings would be appreciable and well worth the expense of new equipment.

REPS. BECKER, MCGILLVRAY, NOENNIG and **NOONAN** continued with the questioning of Judge Phillips regarding some changes in the language that could be made to "clean-up" HB 280.

REP. NOONAN addressed his questions to Ms. Roessmann with regard to her concerns involving the informed consent issue.

REPS. STOKER, HARRIS, MCGILLVRAY and **EVERETT** finished the questioning of the witnesses' regarding the Fiscal Note and the purchase of equipment necessary to implementation of HB 280. **Judge Phillips** stated that the travel budget currently is $5,000; he informed the committee that this would be a cost-saving measure.
{Tape: 2; Side: B; Approx. Time Counter: 173 - 500}
{Tape: 3; Side: A; Approx. Time Counter: 0 - 182}

Closing by Sponsor:

REP. WAGMAN closed the hearing on HB 280 by saying that this would allow the Department of Corrections to be more efficient and would save money and time.
{Tape: 3; Side: A; Approx. Time Counter: 182 - 208}

EXECUTIVE ACTION ON HB 257

Motion/Vote: **REP. CLARK moved that HB 257 DO PASS. Motion carried unanimously by voice vote.**
{Tape: 3; Side: A; Approx. Time Counter: 208 - 228}

EXECUTIVE ACTION ON HB 264

Motion/Vote: **REP. WINDHAM moved that HB 264 DO PASS. Motion carried 16-2 by voice vote with REPS. KOOPMAN and SONJU voting no.**
{Tape: 3; Side: A; Approx. Time Counter: 228 - 303}

REP. HARRIS discussed the coordination of HB 40 and HB 146.
{Tape: 3; Side: A; Approx. Time Counter: 303 - 328}

EXECUTIVE ACTION ON HB 146

Motion: **REP. HARRIS moved that HB 146 DO PASS.**

Discussion:

Motion: **REP. HARRIS moved that HB 146 BE AMENDED with a Conceptual Amendment to DELETE PAGE 7 LINE 3.**

Mr. Macmaster explained the amendment to the committee members.

Vote: **Motion carried unanimously by voice vote.**

Motion: **REP. HARRIS moved that HB 146 DO PASS AS AMENDED.**

Discussion:

Motion: **REP. MCGILLVRAY moved that HB 146 BE AMENDED with AMENDMENT 146-01.**
EXHIBIT(juh16a05)

Discussion:

Mr. MacMaster explained the amendment.

Vote: **Motion carried unanimously by voice vote.**

Motion/Vote: **REP. HARRIS moved that HB 146 DO PASS AS AMENDED. Motion carried unanimously by roll call vote.**
{Tape: 3; Side: A; Approx. Time Counter: 328 - 381}

EXECUTIVE ACTION ON HB 40

Motion/Vote: **REP. HARRIS moved that HB 40 DO PASS. Motion carried unanimously by voice vote.**
{Tape: 3; Side: A; Approx. Time Counter: 381 - 500}

EXECUTIVE ACTION ON HB 46

Motion: **REP. PARKER moved that HB 46 DO PASS.**

Discussion:

Motion: **REP. PARKER moved that HB 46 BE AMENDED.**

Discussion:

There was much discussion regarding the amendments and the bill itself. The committee as a whole could not agree to the language and were wanting additional amendments with more questions to be answered. After much deliberation; the committee decided to rescind action until later after REP. PARKER could make some changes to the bill and amendments.

Motion/Vote: **REP. CLARK moved that ACTION BE POSTPONED ON HB 46 UNTIL A LATER DATE. Motion carried unanimously by voice vote.**
{Tape: 3; Side: B; Approx. Time Counter: 381 - 500}
{Tape: 4; Side: A; Approx. Time Counter: 0 - 156}

ADJOURNMENT

Adjournment: 12:14 P.M.

_____
REP. DIANE RICE, Chairman

_____
PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT(juh16aad0.PDF)

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/21/05

NAME	PRESENT	ABSENT	EXCUSED
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		

s:/JudicRollCall2005

HOUSE STANDING COMMITTEE REPORT

January 21, 2005

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 146** (first reading copy -- white)

do pass as amended.

Signed: Diane Rice
Representative Diane Rice, Chair

And, that such amendments read:

1. Title, page 1, line 5.
Strike: "REPEALING SECTION 17-8-231, MCA;"

2. Page 6, line 12 through line 13.
Strike: "and that" on line 12 through "purposes" on line 13

3. Page 7, line 3.
Strike: section 13 in its entirety
Renumber: subsequent section

- END -

Committee Vote:
Yes 18, No 0.

161255SC.hkh

1/21 9:40

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 40** (first reading copy -- white) **do pass**.

Signed: Diane Rice
Representative Diane Rice, Chair

- END -

Committee Vote:
Yes 18, No 0.

161258SC.hkh

1/21 mp

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 257** (first reading copy -- white) **do pass**.

Signed: Diane Rice
Representative Diane Rice, Chair

- END -

Committee Vote:
Yes 18, No 0.

161256SC.hkh

1/21 mp

HOUSE STANDING COMMITTEE REPORT

January 21, 2005

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 264** (first reading copy -- white) **do pass**.

Signed: Diane Rice
Representative Diane Rice, Chair

- END -

Committee Vote:
Yes 16, No 2.

161257SC.hkh

1/21 9AM

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/21/05 BILL NO HB 1476 MOTION NO. 6
MOTION: Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR	Y		

s:/JudicRollCallVote2005

18/0

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No. HB-257 **Sponsor(s)** Rep. G. Branae

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Kathy Kenyon PO 37000 Billings	Deaconess Billings Clinic	Y		
Jami McCall	DBC	X		
Tom Ebzery	SV Healthcare	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No HB-267 **Sponsor(s)** Rep. R. Stoker

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
HAROLD BLATTIE	MAG	✓		
Rodney Hendrick	Rep.	✓		✓
Pam Buen	DOT			✓

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No. HB-285 **Sponsor(s)** Rep. J. Taylor

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Kelsen Young PO Box 633 Helena, 59624	MCADSV	X		
Dawn Haydon PO Box 633 Helena	self MCADSV	X		
MATTHEW DALE	ATTNY GEN OFF	X		
Kati Chalena	MCADSV	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No. HB-264 **Sponsor(s)** Rep. J. Windham

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Cindy Paradis 1712 9th Ave Helena, MT	Crime Victim Comp Restitution	X		
Dawn Hayden	self	X		
MATTHEW KALE	ATTY GEN OFF	X		
Kate Cholewa	MCADSV	X		
Tom Burey	DOJ	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No. HB-280 **Sponsor(s)** Rep. P. Wagman

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Mary "Marty" Phippen	MT. Assn. Clerks of District Court	X		
Wayne Phillips Plzw, Mont	Mont. Judges Assoc	X		
David Martin	MWA & Lee Enterprises	X		
ANITA ROESSMANN	MAP		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. BRENT R. CROMLEY**, on March 9, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Mike Wheat, Chairman (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 232, HB 354, HB 701, HB 598, HB 345, HB 146, HB 245
Executive Action:	HB 232, HB 354, HB 701, HB 598, SB 493, HB 216

VICE CHAIR CROMLEY opened the hearing. He indicated that the order of the bills would be HB 232, HB 354, HB 701, HB 598, HB 345, HB 146, and HB 245. He opened the hearing on HB 232.

HEARING ON HB 232

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 232,** Require presentence report to propose payment of IT charge.

REP. NOENNIG explained that HB 232 dealt with the surcharge charged in courts. He informed the Committee that the bill would extend the termination date and would require that presentence investigation reports include a directive that the surcharge be charged. He noted that the surcharge was the primary source of funding for information technology (IT) for Montana district courts and courts of limited jurisdiction. The surcharge applies to defendants convicted of any offense that is criminal, and to the initiating party in a civil or probate case for each defendant and respondent who appears in the case. He reported that the surcharge had not raised as much money as it should have for various reasons, including the fact that some judges omitted the charge.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 2.5}

Proponents' Testimony:

Mary Phippen, Representing the Montana Association of Clerks of District Court, stood in support of HB 232.

{Tape: 1; Side: A; Approx. Time Counter: 2.5 - 2.7}

Jim Oppedhal, Administrator for the Montana Supreme Court, rose in support of HB 232 because it was an effort to insure adequate, long term, stable funding for court automation and IT projects. He mentioned that there were 102 courts of limited jurisdiction who use Full Court which is a modern court IT package. They want to make sure that the surcharges are applied uniformly.

{Tape: 1; Side: A; Approx. Time Counter: 2.7 - 4.6}

Ted Clack, Representing the Montana Magistrates Association, provided a written version of his testimony. He expressed that the Association was in strong support of HB 232 and he urged the Committee give a do pass recommendation.

EXHIBIT(jus52a01)

Tom Morrison, an Attorney from Helena, discussed the benefits of automating the court system. He urged the Committee to support the bill.

{Tape: 1; Side: A; Approx. Time Counter: 4.6 - 5.9}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

{Tape: 1; Side: A; Approx. Time Counter: 5.9 - 6.1}

VICE CHAIR CROMLEY requested that in the closing statement **REP. NOENNIG** address the specific language regarding the presentence reports.

Closing by Sponsor:

REP. NOENNIG cited Page 1, Line 30, of HB 232 which contained the language regarding the presentencing report. He explained that the language was a checklist. He indicated that the surcharge was required, but some judges overlook the requirement when they impose their sentences. He informed the Committee that the bill would highlight the surcharge in the presentencing investigation report that is given to the judge. He asked the Committee for a do concur vote.

{Tape: 1; Side: A; Approx. Time Counter: 6.1 - 6.9}

VICE CHAIR CROMLEY closed the hearing on HB 232.

SEN. SHOCKLEY volunteered to carry the bill on the Senate Floor.

{Tape: 1; Side: A; Approx. Time Counter: 6.9 - 7.5}

VICE CHAIR SHOCKLEY opened the hearing on HB 354.

HEARING ON HB 354

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 354**, Revise mobile home landlord tenant law.

REP. NOENNIG informed the Committee that HB 354 was intended to fix and clarify the language of Montana's Abandoned Mobile Home Statute. The bill deals with the issue of an owner of a mobile home court dealing with an abandoned mobile home. He reported that the current law reads that the owner of the mobile home court can have an abandoned mobile home towed, stored, and charge the storage costs to the owner. The problem he saw with this was the expense. HB 354 would allow the mobile court owner the option of storing the abandoned mobile home on the premises or storing it off their property. The second issue the bill addressed was that after a mobile court owner follows proper procedure there is the right to have public or private sale of the motor home. The problem he expressed with this was that Uniform Commercial Codes were deleted. The bill would reinstate a reference to the Uniform Commercial Code for the procedure under private sale, this topic is covered on Page 2, Line 10-11. The third issue he discussed was the issue of a public sale. The third provision Page 2, Lines 12-17, of HB 354 addressed this topic.

{Tape: 1; Side: A; Approx. Time Counter: 7.5 - 11.3}

Proponents' Testimony:

Chris Christians, Representing the Montana Landlord Association, strongly supported HB 354.

{Tape: 1; Side: A; Approx. Time Counter: 11.3 - 11.9}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. NOENNIG asked for a do pass recommendation. He informed the Committee that he did not have a senator to carry the bill on the Senate Floor.

VICE CHAIR CROMLEY closed the hearing on HB 354.

SEN. O'NEIL offered to carry the bill on the Senate Floor.

{Tape: 1; Side: A; Approx. Time Counter: 11.9 - 12.7}

HEARING ON HB 701

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 701**, Revise estate and trust law.

REP. NOENNIG expressed that the State Probate and Trust Division of the State Bar requested that the bill be brought forth. He informed the Committee that each section of the bill did something different. He went through and explained Sections 1-4 of the bill and their purposes.

{Tape: 1; Side: A; Approx. Time Counter: 12.7 - 18.8}

Proponents' Testimony:

Dan McClain, Attorney from Helena and Member of the Business Estate Trust Tax and Real Property (BETTR), called the bill a clean-up bill. He expressed support of the changes to Section 1 dealing with unsuitable trusts, specifically. He explained in more detail what Section 3 pertained to. He also explained Section 4 in more detail. The most important aspect of the bill, in his opinion, was the second part of Section 4, Receipts for Liquidating Assets.

{Tape: 1; Side: A; Approx. Time Counter: 18.8 - 24.2}

Tom Morrison, an Attorney from Helena, Tax Lawyer and Vice Chairman of the BETTR Committee, strongly supported HB 701. He especially appreciated the section of the bill which would raise the limit to $50,000 for informally avoiding probate. He claimed that this bill would help eliminate the unnecessary probates.

{Tape: 1; Side: A; Approx. Time Counter: 24.2 - 26}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. NOENNIG closed on HB 701.

VICE CHAIR CROMLEY volunteered to carry the bill on the Senate Floor.

{Tape: 1; Side: A; Approx. Time Counter: 26 - 26.8}

VICE CHAIR CROMLEY closed the hearing on HB 701 and opened the hearing on HB 598.

HEARING ON HB 598

{Tape: 1; Side: A; Approx. Time Counter: 26.8 - 27}

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 598,** Revise dates applicable to selection of trial juries.

REP. GALLIK informed the Committee that a bill passed last session to combine the jury pools was late in being implemented. HB 598 would delay the effective date of the combination of jury pool individuals until, as indicated in HB 598, 2007 with the applicability date of 2008.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 1.4}

Proponents' Testimony:

Mary Phippen, Representing the Montana Association of Clerks of District Court, informed the Committee that the bill was brought forth at the request of the Clerks because it had become apparent that they could not meet the statutory requirements concerning the timeframe. She provided a fact sheet that was prepared by the Court Administrator's Office, reviewed by the Secretary of State's Office and the Department of Motor Vehicles' Office that explained the complexity of implementing HB 540. In order to maintain the integrity of the jury selection process the delay is necessary in her opinion. She spoke on behalf of Yellowstone County and their lobbyist Charles Brooks in support of HB 598. She had also talked to Al Smith of the Montana Trial Lawyers Association and Scott Chriehton of ACLU and discovered that they were not opposed to the bill. In addition, the Clerk and Recorders Association supported HB 598.

EXHIBIT(jus52a02)

{Tape: 1; Side: B; Approx. Time Counter: 1.4 - 2.9}

Elaine Gravely, Election Deputy for Secretary of State Brad Johnson, expressed that the Secretary of State's Office stood in strong support of HB 598.

{Tape: 1; Side: B; Approx. Time Counter: 2.9 - 3.4}

Brenda Nordlund, Representing the Department of Justice, spoke in support of HB 598. She indicated that the Department had been a partner in the process to implement the IT programs. She urged the Committee's support for HB 598.

{Tape: 1; Side: B; Approx. Time Counter: 3.4 - 4.2}

Nancy Sweeney, Lewis and Clark County Clerk of Court, rose in support of HB 598. She expressed that the clerks of court are very concerned with the quality of juries that would be developed after the procedure was implemented.

{Tape: 1; Side: B; Approx. Time Counter: 4.2 - 5.3}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. GALLIK stressed that it was important to pass HB 598 in order to ensure that juries were not challenged by individuals who are convicted. He indicated that **SEN. ELLINGSON** was carrying the bill on the Senate Floor.

{Tape: 1; Side: B; Approx. Time Counter: 5.3 - 6.2}

VICE CHAIR CROMLEY closed the hearing on HB 598 and opened the hearing on HB 345.

At this time, **SEN. MOSS** left the hearing.

HEARING ON HB 345

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 345,** Revise time period for fraudulent transfer statute of limitations.

REP. GALLIK handed out two statutes, 31-2-333 and 31-2-334, which would be amended by HB 345. He explained that HB 345 would extend the period of time for which a cause of action for a fraudulent transfer may be filed. He brought the bill at the request of several business people who have found that there is

not a sufficient amount of time to bring forth a cause of action for a fraudulent transfer. He explained what he hoped to do with the changes in the two statutes. He gave the definition of a fraudulent transfer. He expressed that they had found that the time limit of two years, set forth in the fraudulence transfer statute, was not sufficient. He indicated that the bill had passed through the House without any problems. There was only one section which was stricken, the Retroactive Applicability, to ensure that the bill would be prospective only.

EXHIBIT(jus52a03)

{Tape: 1; Side: B; Approx. Time Counter: 6.2 - 11.1}

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

VICE CHAIR CROMLEY asked **REP. GALLIK** why they had changed the words "extinguished" to "terminated" on Lines 13 and 14 of HB 345.

REP. GALLIK expressed that he had not requested that change but it came about by the Legislative Services drafters.

VICE CHAIR CROMLEY requested that **REP. GALLIK** speak briefly to Lines 21 and 22.

REP. GALLIK thought that the language in those two lines was trying to say that if there are two competing claims against the transfer or that one of those claims is not going to be deemed extinguished, or terminated, by way of the statute of limitations and the competing claims were going through the judicial system at the same time, then the time period for filing a claim would be extended for the claim which was filed second.

{Tape: 1; Side: B; Approx. Time Counter: 11.1 - 13.7}

VICE CHAIR CROMLEY asked **REP. GALLIK** to run through a scenario in which this bill might be applied.

{Tape: 1; Side: B; Approx. Time Counter: 13.7 - 15.1}

SEN. GARY PERRY, SD 35, MANHATTAN, cited Lines 21-22. He wondered if the language meant that the timeframes set forth in Lines 15-20 did not apply until the judgment was obtained.

REP. GALLIK affirmed **SEN. PERRY'S** statement. He reiterated that the statute of limitations would not start running until there was a judgement attained against an individual on a competing claim.

SEN. PERRY took this to mean that regardless of how long the lawsuit might go on there would be no limit.

SEN. GALLIK explained that there would be a limit it would be the exact same and it would not start until a judgment was obtained.

SEN. PERRY followed up by asking when the tolling began.

REP. GALLIK replied that the statute of limitations did not start to run until one of the two claims had a judgment against it. He clarified that the statute would start to run at the time the judgment was obtained by one of the competing claims on a fraudulent transfer.

{Tape: 1; Side: B; Approx. Time Counter: 15.1 - 18.8}

SEN. PERRY clarified that he had been asking about when the tolling began. He wanted to know if it was when the judgment was obtained or when the lawsuit was filed.

REP. GALLIK responded that the cause of action would arise at the time the fraudulent transfer was made or when there was actual knowledge of a transfer that was made which was fraudulent.

VICE CHAIR CROMLEY questioned **REP. GALLIK** in regard to a situation for a personal injury where an individual transferred property because they knew that they were going to be charged and the plaintiff found out that there was no money to be had because of the transfer. He wanted to know if the tolling period would apply to this scenario.

REP. GALLIK remarked that it would not in that claim because they were not talking about the transferred property being the subject of the claim against the transferor. He stressed that it only applied to the claim for fraudulent transfer.

VICE CHAIR CROMLEY continued asking about the scenario he put forth.

REP. GALLIK clarified that the statute of limitations begins from the time an individual learns that the other person transferred their assets or from the time the individual should have known. He wanted to pass this bill because it would recognize the length of time litigation takes and allow an individual to discover if they had a legitimate claim before they lose the ability to bring a fraudulent transfer claim.

{Tape: 1; Side: B; Approx. Time Counter: 18.8 - 23}

VICE CHAIR CROMLEY was unclear as to when the tolling takes place. He cited Lines 21 and 22.

REP. GALLIK remarked that the limitation periods are tolled until a judgment is obtained. If the property that was transferred was also the subject of another claim, where somebody else has the exact same situation, it is tolled until there is a judgment obtained by one or the other.

{Tape: 1; Side: B; Approx. Time Counter: 23 - 24.7}

At this time **SEN. MOSS** returned.

SEN. MCGEE requested that **REP. GALLIK** provide a layman's definition of toll.

REP. GALLIK explained that toll meant the statute of limitations would not start to run, it is put on standby until a further date.

SEN. PERRY referenced Lines 13-20. He presented the scenario of someone suing him, and he did not want to put assets at risk. If he transferred those assets, he wanted to know if it was a fraudulent transfer because he had knowledge that someone wanted to sue him or would it only be a fraudulent transfer after a lawsuit had been filed.

REP. GALLIK directed the Committee to look at 31-2-333 which explains a fraudulent transfer. He expressed that it was only fraudulent if an individual was going to transfer assets with the intent to hinder, delay, or defraud any creditor of the debtor without having reasonable equivalent value in exchange for the transfer.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.9}

SEN. PERRY followed up indicating that until there was a judgment there would be no debtor.

REP. GALLIK responded that there could still be a fraudulent claim. If an individual knew that a person was going to sue them, and would most likely be successful, and they try to defraud the claimant, that would be a fraudulent claim and at that point in time the statute of limitation would start to run.

SEN. PERRY wanted to know how a person was to know who was going to win a lawsuit.

REP. GALLIK provided examples of cases which are fairly clear in the outcome.

{Tape: 2; Side: A; Approx. Time Counter: 2.9 - 5.6}

Closing by Sponsor:

REP. GALLIK offered to provide a specific memorandum explaining the answers to all of the questions put forth by the Committee before they took Executive Action. He did not have a Senator to carry the bill on the Senate Floor.

{Tape: 2; Side: A; Approx. Time Counter: 5.6 - 7.3}

VICE CHAIR CROMLEY closed the hearing on HB 345 and opened the hearing on HB 146.

At this time, **SEN. PEASE** and **SEN. ELLINGSON** left the hearing.

HEARING ON HB 146

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 146,** Civil false claims act.

REP. GALLIK explained the history of a civil false claims act. He expressed that in HB 146 he was trying to repeat what the federal government had done in their False Claims Act Law. He thought that this bill was a good idea because the people of Montana had entrusted the legislature to take care of the budget. He explained that a false claim was one that was a request or demand for money, property, or services that is made by a third party to a governmental entity that is false and they know it is false. He walked through the bill and addressed a few areas where he would like to see amendments. He described mitigating factors that the government attorney could use. The section of the bill he was most concerned with was on Page 4, New Section 6. This language would allow a private citizen who found out, not

through the newspaper or court action, that an individual had made a false claim against the State to come forth and hand over the case to the Attorney General and share in the proceeds. He wanted to make sure that through an amendment they could clarify that it is not a criminal complaint but a civil complaint under the False Claims Act. In this instance, the private citizen could also carry forth a claim against the suspect if the Attorney General decides for some reason not to. The citizen would be entitled to 10-15% of the proceeds unless they were the only ones to prosecute, in which case they would be entitled to 25-50% of the recovery. He requested that the Committee consider placing back into the bill, on Page 6, Lines 12-13, the words "and the court finds that it was clearly frivolous or brought solely for harassment purposes." He briefly discussed the fiscal note attached to the bill. He brought forth the concern about the confusion with a civil or criminal claim.

{Tape: 2; Side: A; Approx. Time Counter: 7.3 - 23.8}

Proponents' Testimony:

Ali Bovington, Representing the Attorney General's Office, spoke in support of HB 146. She reiterated that the bill was a Civil False Claim Act which mirrored the federal law. They were in support because it would add another avenue of relief for state government when they do business with individuals or organizations who attempt to defraud the government.

{Tape: 2; Side: A; Approx. Time Counter: 23.8 - 24.5}

Jed Fitch, Representing the Montana Trial Lawyers Association, rose in support of the bill. He discussed the background of the Civil False Claims Act as well. He claimed that the bill was a governmental privatization initiative. He asserted that it could be used to deal with Medicaid and Medicare fraud. He supported the replacement of the stricken language and the insertion of the word civil.

{Tape: 2; Side: A; Approx. Time Counter: 24.5 - 28.5}

Harris Himes suggested that the bill mirror more closely the federal bill and the other states by taking out the section which would potentially make another person pay the attorney fees for a large corporation.

{Tape: 2; Side: B; Approx. Time Counter: 0 - .9}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, presented a scenario where an individual sued his ex-wife for fraud on a shared tax form for their child.

REP. GALLIK referred to Page 3, Lines 4-9, any and all claims against taxes would be exempted out. He noted that this was uniform with federal law.

At this time, **SEN. ELLINGSON** returned.

SEN. JEFF MANGAN, SD 12, GREAT FALLS, was curious why the Trial Attorneys would support a bill which stated that if an individual brought a frivolous action the person who brought the action would get stuck with the court and attorney costs. Yet, when other bills in non-governmental actions like this were brought before the Committee, the Trial Lawyers vehemently opposed them.

Mr. Fitch replied that they support the bill, although the particular section which **SEN. MANGAN** was discussing was not in other state's bills and they would like to see the whole section deleted. However, if that part was to remain in they would want to see the stricken language placed back in the bill.

{Tape: 2; Side: B; Approx. Time Counter: .9 - 4.5}

SEN. MANGAN wondered how **REP. GALLIK** saw this bill working with the Department of Justice and the laws and personnel that are already in place to deal with the issues at the CSED and for welfare fraud.

REP. GALLIK cited Page 3, Lines 23-26, Subsection D. He explained that if there was a present or former employee of the state and during the course of employment they discovered a fraud, they must bring it to the attention of their supervisors first.

SEN. MANGAN clarified that his question was how the bill would work in conjunction with other agencies. He wondered who would have precedence--the other agencies or this law.

REP. GALLIK thought that it would depend on who the whistle blower went to. If they went to a government attorney, that attorney would have precedence. He deferred the question to Ms. Bovington.

Ms. Bovington believed that if there was a false claim against a state agency and there were separate specific laws dealing with that particular claim, those claims would trump the Civil False Claims Act. She explained that if there is a more specific statute, it would apply over a more general statute.

SEN. MANGAN asked Ms. Bovington if she thought that they needed to clarify the language in the bill or if it was clarified in other statutes.

Ms. Bovington thought that it was clear because of the rules of statutory interpretation. She also had a hard time thinking of an example when there were specific regulatory statutes that would apply and conflict with this particular bill.

{Tape: 2; Side: B; Approx. Time Counter: 4.5 - 11.2}

SEN. MANGAN was troubled by the payment to the whistle blower. He wondered if **REP. GALLIK** saw a potential problem with an individual finding out about a false claim and waiting to report it in order to receive a larger percentage of the proceeds. He wanted some assurance that the payment was necessary and would not be abused.

At this time **SEN. PEASE** returned to the Committee hearing.

REP. GALLIK expressed that, if the whistle blower was a government employee, they have an obligation to inform their superiors and would not be able to take advantage of the bill's payment. However, he had found that if the payment of money is taken out then there is no need to have the bill. The point of the payment of money is that it is the incentive to have people stay the course with the case.

REP. MANGAN followed up by asking if **REP. GALLIK** knew if State Fund would provide money to the individuals who turned others in for fraud.

REP. GALLIK answered that he did not know for sure, but he did not think that they do. He promised to find out for the Committee.

REP. MANGAN, assuming that they don't, wanted to know if **REP. GALLIK** would say that they have been successful in encouraging people to watch out for fraud without having to pay a monetary award.

REP. GALLIK did not know. He knew that they had a paid staff of investigators who go after solely these types of false claims.

He thought that this bill would add another way, without costing taxpayers, another way of protecting taxpayer dollars.

{Tape: 2; Side: B; Approx. Time Counter: 11.2 - 15.9}

SEN. MCGEE addressed the stricken language which **REP. GALLIK** wanted added back into the bill. He wanted to know where the language was stricken.

REP. GALLIK replied that it had been stricken in House Judiciary.

SEN. PERRY asked who originally requested the bill.

REP. GALLIK answered that he had been the one to request the bill.

{Tape: 2; Side: B; Approx. Time Counter: 15.9 - 16.9}

SEN. PERRY referred to Page 5, Line 22, where it said, "If a private citizen participated in the act or acts found to be in violation..." He wanted to know if that private citizen would be called a co-conspirator or co-perpetrator.

REP. GALLIK thought that what the language was trying to get at was that, if this private citizen had some inside knowledge of the fraud, it would give the court the out to prevent that individual from receiving the cash because they were complicit in the setting up of the fraud.

SEN. PERRY followed up citing that 50% under any circumstance was the highest compensation a private citizen would receive.

REP. GALLIK affirmed this statement.

At this time **SEN. PEASE** left the hearing.

SEN. PERRY wondered if it was possible that a disgruntled employee might find incentive in this bill to bring a fraudulent claim and expect a reasonable settlement without going to court.

REP. GALLIK hoped that it would not be the case. He noted that the bill was not for an individual bringing a fraudulent claim or a false claim but rather must prove that they have the ability to prove that there has been a knowing false claim made against the State of Montana, that resulted in the loss of money for Montana. He agreed that **SEN. PERRY'S** scenario might happen but he did not see that happening.

{Tape: 2; Side: B; Approx. Time Counter: 16.9 - 22.5}

SEN. PERRY cited Page 4, Lines 13-21. He wondered if the other 50% would go to the government agency.

At this time **SEN. MOSS** returned to the meeting.

REP. GALLIK affirmed that the money would go back to the governmental entity--State of Montana.

REP. PERRY asked when the interests of the governmental entities would be adequately represented by the private citizen in any case. He was not aware of any case where a private citizen would file a lawsuit on behalf of a governmental entity.

REP. GALLIK explained that the governmental entity had first choice to decide if they want to go forth. If they chose not to, the private citizen would have the right to go forth on their own. If the government attorney decides that the State of Montana's interests were not being adequately represented, they have the right to intervene in the case.

{Tape: 2; Side: B; Approx. Time Counter: 22.5 - 25.8}

SEN. PERRY understood that but wanted to know when the interests of the government entity were being adequately or not adequately being represented by a private citizen in a court of law.

REP. GALLIK thought that it would be decided on a case by case basis and would be decided by the government attorney or by the court.

{Tape: 2; Side: B; Approx. Time Counter: 25.8 - 26.4}

SEN. PERRY clarified that he was asking if there were any other cases or circumstances where a private citizen representing themselves, also represents a government entity in a privately filed complaint in which the government entity itself may receive half or more of any damages awarded in such a case.

Ms. Bovington explained that this was very common in cases against pharmaceutical companies, where a whistle blower brings forth a case. In response to the question of when can a private citizen adequately protect the interests of a governmental entity, in the context of litigation, she stated that it would have to be dealt with case by case. She imagined that if there was a complaint brought by a private citizen, and based on the information the government had at the time the complaint was brought, they decided it was not worth pursuing, but the plaintiff went forward with the case anyway; there is a situation

where that private citizen could potentially receive a judgment where the State's interest was adequately represented.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 4}

SEN. PERRY thought that the legislation was revolutionary and precedence setting in the bill. He wanted to know if there were private citizens filing lawsuits anywhere at anytime on behalf of a government entity through which the result may be that the government entity may receive damages.

Ms. Bovington offered to do research on the topic.

SEN. SHOCKLEY wanted to do away with Section 11, which dealt with costs and attorney's fees. He felt that if that Section was dealt with then the problem of a private citizen becoming rich, would be dealt with.

REP. GALLIK thought that the costs and attorney's fees had to be in the bill because if they were removed there would be no way to find an individual who would prosecute it through to a judgment. If it was that good a case, then the Attorney General would take it on.

{Tape: 3; Side: A; Approx. Time Counter: 4 - 6.9}

SEN. SHOCKLEY mentioned that if the government decided to enter into a case they had originally passed on, they would be taking on the costs and fees yet the private citizen would still receive 10-15%.

REP. GALLIK referenced Page 4, Lines 17-21, Subsection 4 of Section 6. In the scenario **SEN. SHOCKLEY** put forth, the private citizen would retain the principal responsibility for full control of the action.

VICE CHAIR CROMLEY thought that the federal statute did not have the attorney fee provision.

REP. GALLIK clarified that the federal statute has the attorney fee provision but they do not have the attorney fee provision that allows the person who has been alleged to be defrauded to file a claim against the private citizen and get their attorney fees paid for.

{Tape: 3; Side: A; Approx. Time Counter: 6.9 - 10}

SEN. MCGEE asked for a definition of private citizen.

REP. GALLIK could not cite that statute that defined private citizen but he knew that a citizen is one that is an individual, not an entity. He thought that a person, as it was defined, included all of the entities. Whereas, a private citizen cannot be anything other than an individual.

SEN. MANGAN asserted that he was an entity, as a contractor, although he was the only one in the company. If he knew of a scam against the State of Montana and he came forward with it, he wanted to know if he could come forward as Dan McGee or if he would have to come forward as McGee and Co.

REP. GALLIK thought that he would have to come forward as Dan McGee, the private citizen.

SEN. MCGEE wanted to know why **REP. GALLIK** would want it that way.

REP. GALLIK did not know, although he thought that it would not be a problem to change the bill to allow for the other possibility.

{Tape: 3; Side: A; Approx. Time Counter: 10 - 12.8}

SEN. MANGAN noted that in the original bill, 17-8-231 was repealed. He wanted to know what the reason was for the House removing this section of the bill.

REP. GALLIK believed that the reason they removed the section was that if HB 146 went into law then the current False Claims Act would be conflicting. He deferred the question to Ms. Bovington.

SEN. MANGAN mentioned that the House had taken out the repealer so that both laws would be on the books if HB 146 passed. He wanted to know how Ms. Bovington saw the two laws working together.

Ms. Bovington responded that the bill had originally been drafted to repeal 17-8-231. She mentioned that the Department of Justice had a bill that was sponsored by **REP. HARRIS**, HB 40, which was the reverse false claims bill. In terms of coordinating these two pieces of legislation, she explained that the decision was made to strike the repealer from **REP. GALLIK'S** bill, keeping 17-8-231 on the books and also HB 40 if it passed.

REP. MANGAN followed up by asking how Ms. Bovington saw all of these statutes working together, especially when the current statute says a "penalty not to exceed $2,000 plus double the damages sustained by the State."

Ms. Bovington explained that HB 146 on Page 2, Lines 20-21, include language that constitutes a reverse false claim. Therefore, the Department's amendments to Title 17 would not be necessary. She expressed that the only part of HB 40 that would remain would be the amendment to Title 45, the criminal false claims statute. She felt that if HB 146 were to pass then the repealer should be restored.

{Tape: 3; Side: A; Approx. Time Counter: 12.8 - 16.9}

Closing by Sponsor:

REP. GALLIK informed the Committee that because HB 40 did not have the tax exemption, **REP. HARRIS** had asked **REP. GALLIK** to ask the Committee to fold in HB 40 with HB 146. This would provide for the reverse false claims with the False Claims Act and there would be no need for a repealer. He indicated that instead of using the word "civil" they would prefer to place on Page 1, Line 10, between the words "of Montana" and "false claims," "Montana civil false claims." He suggested doing this also on Page 4, Line 6, renaming the bill to "Civil Complaint by Private Citizen." He wanted to fashion the law after the federal False Claims Act since it was proven to work well. He reiterated that he wanted Page 6, Lines 12-15, deleted. He reminded the Committee that they were trying to find another tool to make sure that the taxpayers' money was properly spent and used effectively. He urged do pass for HB 146.

{Tape: 3; Side: A; Approx. Time Counter: 16.9 - 21.5}

VICE CHAIR CROMLEY closed the hearing on HB 146 and opened the hearing on HB 245.

HEARING ON HB 245

Opening Statement by Sponsor:

REP. GARY MACLAREN (R), HD 89, opened the hearing on **HB 245,** Require parental consent for body piercing of a minor.

REP. MACLAREN commented that HB 245 was a result of a constituent's request. He explained that the purpose of the bill was to add body piercing to the same regulations that govern tattooing of minors. This would simply require that the piercer verify that the minor has parental consent. He reserved the right to close.

{Tape: 3; Side: A; Approx. Time Counter: 21.5 - 23.3}

Proponents' Testimony:

Jackie Trude, Representing Eagle Forum, asserted that she was responsible for the care and protection of her children. She felt that it was her right to know about the piercing of her children. She related the story of her daughter's tongue piercing. She called the bill pro-parent and urged a do pass consideration by the Committee.

{Tape: 3; Side: A; Approx. Time Counter: 23.3 - 25.4}

Harris Himes, Representing the Montana Family Coalition, related stories from the days when he was in the Navy. He felt that if there was parental consent necessary there would not be circumstances where a teenager is under peer pressure or the influence of a drug when they get a piercing. He urged a do pass recommendation and suggested placing language in the bill to cover future evolutions of body alterations.

{Tape: 3; Side: A; Approx. Time Counter: 25.4 - 27.5}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. MACLAREN reiterated that the bill would only add body piercing to the same sections which cover tattooing. He requested a do concur.

{Tape: 3; Side: A; Approx. Time Counter: 27.5 - 28.8}

VICE CHAIR CROMLEY closed the hearing on HB 245. He opened Executive Action on HB 232.

Executive Action on HB 232

Motion/Vote: SEN. LASLOVICH moved that HB 232 BE CONCURRED IN. Motion carried unanimously by voice vote with SEN. MANGAN and SEN. WHEAT voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 1.9}

Executive Action on HB 354

Motion/Vote: SEN. O'NEIL moved that HB 354 BE CONCURRED IN. Motion carried unanimously by voice vote with SEN. MANGAN and SEN. WHEAT voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 1.9 - 3.6}

Executive Action on HB 701

Motion: SEN. LASLOVICH moved that HB 701 BE CONCURRED IN.

Discussion: SEN. AUBYN CURTISS, SD 1, FORTINE, had a question relative to Section 4, Page 2. She thought that the bill was retroactive for a long period of time. She wanted Ms. Lane to comment.

Valencia Lane, Legislative Fiscal Analyst Assistant, explained that the retroactive applicability date applied only to Section 4 of the bill. Section 4 of the bill had to do with the estate tax returns. The goal was to allow individuals whose family member died when the tax credit was still available would be able to take advantage of the credit.

{Tape: 3; Side: B; Approx. Time Counter: 3.6 - 5.3}

SEN. JESSE LASLOVICH, SD 43, ANACONDA, addressed Line 26, of Page 2. He indicated that the language "decedent dying" should be stricken and "person who died" should be added.

Ms. Lane wanted to be careful in taking out the word decedent because through the entire act, there were references to decedent.

SEN. LASLOVICH agreed but reiterated that decedent dying sounded redundant.

VICE CHAIR CROMLEY commented that if he was going to change the wording it would be changed to "decedent who died prior to."

{Tape: 3; Side: B; Approx. Time Counter: 5.3 - 7.8}

Motion/Vote: SEN. LASLOVICH moved that HB 701 BE AMENDED TO STRIKE THE WORD "DYING" AND INSERT THE WORDS "WHO DIED" ON PAGE 2, LINE 26. Motion carried unanimously by voice vote with SEN. WHEAT and SEN. MANGAN voting by proxy.

EXHIBIT(jus52a04)

Motion: **SEN. SHOCKLEY moved that HB 701 BE CONCURRED IN AS AMENDED.**

Discussion: **SEN. SHOCKLEY** commented that they might be able to strike a section of code. He wanted to know if they couldn't just remove the whole section.

Ms. Lane replied that they shouldn't do that because there were still estates open which could take advantage of the credit. She knew that the bill was requested by the State and Trust Division of the State Bar Association and they had chosen to amend it instead of repeal it. She suggested that before they repeal it, the Committee should ask the State and Trust Division about the issue.

SEN. SHOCKLEY clarified that the law that was in effect on the 31 of December, 2004, would cover the open estates.

Ms. Lane repeated that she did not know enough about the laws to answer these questions accurately.

{Tape: 3; Side: B; Approx. Time Counter: 7.8 - 11.3}

VICE CHAIR CROMLEY agreed with **SEN. SHOCKLEY.**

SEN. SHOCKLEY explained that Certified Public Accountants have to use the tax code in effect the year of an individual's death.

Vote: **Motion carried unanimously by voice vote with SEN. WHEAT and SEN. MANGAN voting by proxy.**

{Tape: 3; Side: B; Approx. Time Counter: 11.3 - 12.3}

Ms. Lane commented that there needed to be a senator to carry the previous bills.

VICE CHAIR CROMLEY replied that HB 354 would be carried by **SEN. O'NEIL** and he volunteered to carry HB 701.

Executive Action on HB 598

Motion/Vote: **SEN. PERRY moved that HB 598 BE CONCURRED IN. Motion carried unanimously by voice vote with SEN. WHEAT and SEN. MANGAN voting by proxy.**

{Tape: 3; Side: B; Approx. Time Counter: 12.3 - 13.6}

VICE CHAIR CROMLEY indicated that **SEN. ELLINGSON** would carry HB 598 on the Senate Floor.

Executive action on SB 493

Motion: **SEN. LASLOVICH moved that SB 493 BE CONCURRED IN.**

Discussion: **SEN. LASLOVICH** informed the Committee that SB 493 was the bill he introduced prior to transmittal that dealt with motor vehicle liability insurance. He also indicated that **SEN. SHOCKLEY'S** bill had to coordinate with SB 493.

Brenda Nordland, Representing the Department of Justice, explained what the policy question was which was prevented by the possible coordination between SB 493 and SB 205, which the Senate passed. She cited Page 3, of SB 493, Lines 9-17. The policy question she presented to the Committee was whether they wanted to do a driver's license suspension under the current law and apply it to the second or subsequent violation. She noted that the current law position as amended by SB 205 would require the suspension of the driver's license until such a time as the individual provides proof of compliance with 61-6-301. She explained that **SEN. SHOCKLEY'S** bill changed the law so that driver's license suspension would start at second offenses instead of fourth or subsequent offenses. The difference between **SEN. SHOCKLEY'S** bill and **SEN. LASLOVICH'S** was that, upon report of the second or subsequent conviction, the driver's license would be suspended and would not be reinstated until the driver produced the SR-22 showing proof of future responsibility, directly from the insurance carrier to the Motor Vehicle Division. She provided a copy of the SR-22 form and the SR-26 form.

EXHIBIT(jus52a05)

{Tape: 3; Side: B; Approx. Time Counter: 13.6 - 20.1}

SEN. SHOCKLEY inquired about the cancellation policy of the SR-22.

Ms. Nordland replied that the only way an SR-22 could be canceled is if the insurance company gave the Department of Justice at least ten days' notice of the cancellation.

SEN. SHOCKLEY thought that this would essentially accomplish what the preexisting system was already doing. He suggested killing SB 205.

Ms. Nordland remarked that it was a system that worked and the industry was comfortable with the use of the system.

SEN. SHOCKLEY offered to table his bill in the House.

{Tape: 3; Side: B; Approx. Time Counter: 20.1 - 21.4}

Motion/Vote: SEN. LASLOVICH moved that SB 493 BE AMENDED WITH SBO49301.ALK. Motion carried 11-1 by voice vote with SEN. O'NEIL voting no and SEN. WHEAT and SEN. MANGAN voting aye by proxy.

EXHIBIT(jus52a06)

Motion: SEN. LASLOVICH moved that SB 493 BE AMENDED TO INCLUDE HB038502.ALK.

EXHIBIT(jus52a07)

Discussion: SEN. LASLOVICH explained that the amendment would make the bill apply to a second or subsequent offense.

SEN. MCGEE asked if this would emulate **SEN. SHOCKLEY'S** bill.

SEN. LASLOVICH expressed that **SEN. SHOCKLEY'S** bill would have taken the license plates away, while his bill made it mandatory that on the second or subsequent offense an individual must get the SR-22 insurance.

{Tape: 3; Side: B; Approx. Time Counter: 21.4 - 24.3}

SEN. SHOCKLEY commented that SB 493 would be more workable for the industry.

Vote: Motion carried unanimously by voice vote with SEN. WHEAT and SEN. MANGAN voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 24.3 - 24.8}

Motion: SEN. LASLOVICH moved that SB 493 BE CONCURRED IN AS AMENDED.

Discussion: SEN. O'NEIL thought that there was a section of the Constitution which stated that a person has a right not to incriminate themself.

SEN. LASLOVICH did not know constitutional law. He referred the question to **SEN. SHOCKLEY.**

SEN. SHOCKLEY remarked that the 5th Amendment provided that right.

SEN. O'NEIL followed up by asking where an individual had given up their right against self incrimination because according to Page 1, Line 17, an individual has to respond to a survey which asks if they have a vehicle and whether or not it is insured. He felt that they would incriminate themselves if they answered that they did have a car but did not have insurance.

SEN. MCGEE believed that the bill applied to individuals who had already been convicted of not having insurance. He thought that they were trying to follow up on individuals who have been convicted of not having insurance to make sure that they get their insurance at some later time. To him it was similar to a parol or probation period in the sense that it was part of their conviction. He did not see that there was a fifth amendment situation where they were yielding their rights.

SEN. SHOCKLEY asserted that another way of looking at this survey was: the government gets to ask the question but the individual does not have to answer.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 1.3}

SEN. O'NEIL interpreted the bill to mean that the survey would be given to individuals when they were no longer being charged with anything. He thought that if the survey was part of the sentence he would not have a problem with it. However, since they have not lost the right to self-incrimination he felt that the bill was inappropriate. He attested that if they did not have to answer the survey then there was no reason to have it in the bill.

SEN. MCGEE responded that **SEN. O'NEIL'S** supposition was that the person did not have the insurance or did not want to answer the survey. However, the bill would allow the State to ask the question. The point he wanted to make was that an individual might have bought the insurance and want to inform the State. He stressed that these individuals would not be implicating themselves.

{Tape: 4; Side: A; Approx. Time Counter: 1.3 - 3.2}

SEN. LASLOVICH agreed with **SEN. MCGEE.** He stated that this bill would allow the Department to randomly survey those convicted. He reminded the Committee that **SEN. HANSON** had carried a bill at the beginning of session which requested that all people be surveyed. He explained that they had paired this down to

encompass only those who had been convicted of driving without insurance.

SEN. PERRY wanted to know if the fiscal note was still accurate because the date on it was February 21.

SEN. LASLOVICH replied that it was no longer accurate. He expressed that the reason it had changed was the amendments which they had added during the meeting. He indicated that the amount of money entering the general fund would be decreased.

SEN. PERRY asked if the rest of the fiscal note was still accurate.

SEN. LASLOVICH thought that it would be because the rest of the fiscal note applied to the full-time-equivalents associated with the survey.

SEN. PERRY followed up by asking why Part 1 of the assumptions said SB 493 requires surveys, but Line 13 of the bill said that the Department or its agent may ask to perform a survey.

SEN. LASLOVICH did not know why the fiscal note said requires when the bill said may.

Ms. Nordland reported that the fiscal note was built off of **SEN. HANSON'S** fiscal note. She indicated that the wording was may and if the intent was must then the bill would need to be reworded.

{Tape: 4; Side: A; Approx. Time Counter: 3.2 - 7.5}

SEN. PERRY cited Line 13 of the bill. He was confused because on Line 1 of the Assumptions it stated that surveys were required of individuals who were convicted of no automobile insurance violations over the past five years.

SEN. LASLOVICH answered that in Assumption 1 of the fiscal note the wording meant convicted of not having automobile insurance, not that the individual had been convicted of no violations. He clarified that the bill stated that individuals who were convicted over the last five years could be randomly sampled by the Department and what **SEN. PERRY** was wondering about the "no" in Assumption 1 of the fiscal note.

{Tape: 4; Side: A; Approx. Time Counter: 7.5 - 11}

SEN. O'NEIL commented that he felt that the bill was harassing individuals and that the fiscal note would not be as large as expected.

Vote: Motion carried unanimously by voice vote with SEN. MANGAN and SEN. WHEAT voting aye by proxy.

{Tape: 4; Side: A; Approx. Time Counter: 11 - 12}

Executive Action on HB 216

Motion: SEN. MCGEE moved that HB 216 BE CONCURRED IN.

Discussion: SEN. MCGEE indicated that there was an amendment for the bill.

EXHIBIT(jus52a08)

SEN. MCGEE informed the Committee that on Page 2, Subsection 8, Lines 9-11, he had a question regarding the phrase "rights to earnings." He was curious if this could result in the employer of the obligor being responsible for payments. He explained what the amendment would do to the bill's language. He wanted to make sure that the records of the employer would not be subjected to scrutiny.

Ms. Lane clarified the language.

{Tape: 4; Side: A; Approx. Time Counter: 12 - 16.3}

Vote: Motion carried unanimously by voice vote with SEN. WHEAT and SEN. MANGAN voting by proxy.

{Tape: 4; Side: A; Approx. Time Counter: 16.3 - 16.6}

Motion/Vote: SEN. MCGEE moved that HB 216 BE CONCURRED IN AS AMENDED. Motion carried 11-1 by voice vote with SEN. SHOCKLEY voting no and SEN. WHEAT and SEN. MANGAN voting aye by proxy.

{Tape: 4; Side: A; Approx. Time Counter: 16.6 - 17.2}

Ms. Lane brought to the Committee's attention that HB 245 would conflict with SB 137. She indicated that SB 137 was extensive and would adopt a board to regulate body alterations. She expressed that the two bills needed to coordinate and she would not be able to coordinate them unless there was a policy decision. She suggested that a senator who was interested in either of the two bills should visit with the sponsors and determine the policy decision.

SEN. LYNDA MOSS, SD 26, BILLINGS, believed that SB 137 was **SEN. LEWIS'** bill from the Public Health Committee. She thought that

it would be worthwhile to visit with **SEN. LEWIS** to come forward with an alternative. She offered to meet with him in order to discuss the bill.

{Tape: 4; Side: A; Approx. Time Counter: 17.2 - 19.6}

SEN. O'NEIL wanted to know how an individual could have indirect partial ownership as it related to HB 216.

Ms. Phieffer responded that they could list out all the different types of business interests but they were trying to cover all of the possibilities of an interest in a business that might include limited liability. She indicated that they wanted an individual who had a financial interest in the business and some rights to management. She was not prepared to give the alternate scenarios.

Motion/Vote: SEN. O'NEIL moved to RECONSIDER THE MOTION on HB 216. Motion failed 1-11 by voice vote with SEN. CROMLEY, SEN. CURTISS, SEN. ELLINGSON, SEN. LASLOVICH, SEN. MANGAN, SEN. MCGEE, SEN. MOSS, SEN. PEASE, SEN. PERRY, SEN. SHOCKLEY, and SEN. WHEAT voting no with SEN. MANGAN and SEN. WHEAT voting no by proxy.

{Tape: 4; Side: A; Approx. Time Counter: 19.6 - 23.5}

ADJOURNMENT

Adjournment: 11:18 A.M.

_____
SEN. MIKE WHEAT, Chairman

_____
MARI PREWETT, Secretary

_____
BRITT NELSON, Secretary

MW/mp/bn

Additional Exhibits:

EXHIBIT(jus52aad0.PDF)

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-9-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN			X
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE	X		
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD	X		
MARI PREWETT, COMMITTEE SECRETARY			

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 216** (third reading copy -- blue) **be concurred in as amended.**

Signed: *Senator Mike Wheat, Chair*

To be carried by Senator Jesse Laslovich

And, that such amendments read:

1. Page 2, lines 10 through 11.
Strike: "an interest" on line 10 through "exercised" on line 11
Insert: "full or partial ownership with rights to participate in general management and control that are derived from the full or partial ownership interest"

- END -

521600SC.sjo

Committee Vote:
Yes 11, No 1.

SENATE STANDING COMMITTEE REPORT

March 9, 2005

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 232** (third reading copy -- blue) **be concurred in.**

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Jim Shockley

- END -

Committee Vote:
Yes 12, No 0.

521554SC.sjo

SENATE STANDING COMMITTEE REPORT

March 9, 2005

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 354** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Jerry O'Neil

- END -

Committee Vote:
Yes 12, No 0.

521555SC.sjo

SENATE STANDING COMMITTEE REPORT

March 9, 2005

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 598** (third reading copy -- blue) **be concurred in.**

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Jon Ellingson

- END -

Committee Vote:
Yes 12, No 0.

521557SC.sjo

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 701** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Brent Cromley

And, that such amendments read:

1. Page 2, line 26.
Following: "decedent"
Strike: "dying"
Insert: "who died"

- END -

Committee Vote:
Yes 12, No 0.

521556SC.sjo

SENATE STANDING COMMITTEE REPORT

March 10, 2005

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 493** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Mike Wheat, Chair

And, that such amendments read:

1. Page 3, line 18.
Following: "report of a"
Insert: "second or subsequent"

2. Page 3, line 26.
Following: "and"
Insert: ", commencing from the date of license reinstatement,"

3. Page 4, line 13.
Following: line 12
Insert: "COORDINATION SECTION. **Section 6. Coordination instruction.** If both Senate Bill No. 248 and [this act] are passed and approved, then Senate Bill No. 248 is void."

- END -

Committee Vote:
Yes 12, No 0.

531026SC.sjo

PROXY VOTE

I, the undersigned, hereby authorize Senator Crombe to vote my proxy on any issue before the Senate Judiciary Committee held on 3/9, 2005.

SENATOR
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator Lewis to vote my proxy on any issue before the Senate Judiciary Committee held on 3.9, 2005.

HB 232 : Yes

HB 354 : Yes

HB 701 : Yes & Yes to Amendments

HB 598 : Yes

SB 493 : Yes

HB 216 : Yes & Yes to Amendments

SENATOR
STATE OF MONTANA

DATE March 9, 2005

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 701, HB 598, HB 354, HB 345, HB 245, HB 232, HB 146

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
HB598 Mary "Marty" Phippen	431-262-8459	Mt. Assn. Clerks of District Court	HB232 HB598	X	
HARRIS HIMES		MFC	245	✓	
Elaine Gramley	4-5376	DOJ	598	✓	
Greg Noose	444-1776	DOJ - MVD	598	✓	
Jed C. Fitch	443-3124	MT Trial Lawyers	HB146	X	
Ted Clack	442-9821	MT Magistrates	HB232	X	
Jan Oppedahl	444-2621	Court Administrator	HB232	X	
Nancy Sweeney	447-8215	Lewis & Clark Co. Clerk of District Court	HB598 HB232	X	
THOMAS C MEGUIRE	443-1040	VICE CHAIR MT BAR BETTER COMM	HB232 HB701	X	
Brenda Nordlund	444-2713	MT Dept of Justice	HB598	X	
Mike Boryndon	444-5876	Atty Gen's office	HB146	X	
Jacque Trude	458-8609	Eagle Forum	HB245	X	
Chris Christiaens	868-6406	MLA	HB345	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT,** on March 31, 2005 at 9:07 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jeff Mangan (D)
Sen. Dan McGee (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: None.
Executive Action: HB 146, HB 324, HB 366, HB 474, HB 562, HB 730

EXECUTIVE ACTION ON HB 146

{Tape: 1; Side: A; Approx. Time Counter: 0.3}

Motion: SEN. CROMLEY moved that HB 146 BE CONCURRED IN.

Motion: SEN. CROMLEY moved that Amendment HB014601.AVL BE CONCURRED IN.

EXHIBIT(jus68a01)

Discussion: Ms. Lane explained the Amendment. **CHAIRMAN WHEAT** asked if the bill was structured after the Federal Statute. **Ms. Lane** said, yes, it is, and noted that New Section 5, Page 4, Lines 3-4, was at the Attorney General's request.

Vote: Motion carried unanimously by voice vote. SEN. MANGAN and SEN. MCGEE voted aye by proxy.

Motion: SEN. CROMLEY moved that HB 146 BE CONCURRED IN AS AMENDED.

Discussion: SEN. CURTISS said most of this was covered in existing law and asked if the bill was necessary. **CHAIRMAN WHEAT** said this is fashioned after the Federal "whistle-blower" statute, and it is not in place in Montana. He did not think it was covered in existing law.

SEN. PERRY asked who advised that the bill was modeled after a Federal law. **Ms. Lane** said **REP. GALLIK** indicated that during his testimony. **SEN. PERRY** said he could not support the bill.

SEN. CROMLEY said he thought it was modeled after the Federal act and also that the majority of states have similar acts. He thought it was a good bill and gave an example that he knew of to illustrate how it worked. He strongly supports the bill.

SEN. SHOCKLEY said that anytime the public can be involved in looking after the government's money and it doesn't cost the government anything, it is a good idea.

SEN. PERRY stated that the problem he sees is that it gives financial incentives for one citizen to be chasing after what may or may not be true. Anyone could be charged and have to defend themselves, while the "whistle-blower" has a financial incentive to gain from it.

SEN. SHOCKLEY stated it is like any other claim, and there has to be proof of the claim.

SEN. CROMLEY said if it was a frivolous claim it would not go into this action, because with this particular bill they would only get a percentage of the money.

SEN. O'NEIL noted that Page 6, Line 13, addresses **SEN. PERRY'S** concern. He gave an example, and said that a hospital was using a double set of books, one to get money from the government, and the other to show they weren't making any profit. Someone brought a suit against the hospital and both the "whistle-blower" and the government made money from his lawsuit.

*Comment: **SEN. ELLINGSON** left the room.*

SEN. CURTISS said she could not support this and thought it would open the door for a lot of litigation related to allegations.

CHAIRMAN WHEAT explained that the bill was designed to address people who are "ripping off" the taxpayers. He said he will support the bill, and felt it would not open the floodgates of litigation because there has to be proof when the claim is brought. He stated that he agreed with **SEN. SHOCKLEY** and wanted to have a way to get the money back.

Vote: Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. MCGEE, and SEN. PERRY voting no. SEN. ELLINGSON, SEN. MANGAN and SEN. MCGEE voted by proxy.

CHAIRMAN WHEAT asked **SEN. CROMLEY** to carry the bill on the floor, and he agreed to.

EXECUTIVE ACTION ON HB 324

{Tape: 1; Side: A; Approx. Time Counter: 16.4}

Motion: SEN. WHEAT moved that HB 324 BE CONCURRED IN.

Motion: SEN. O'NEIL moved a conceptual amendment to Line 21 to strike the words "...but is not limited to".

Discussion: SEN. O'NEIL stated that those words make the bill vague and he would like to have a better structured bill.

SEN. CROMLEY spoke in opposition to the Amendment and said he did not think that would change the meaning.

SEN. SHOCKLEY asked who drafted the bill. **Ms. Lane** said that she did not know who drafted it. **SEN. CROMLEY** stated it was John McMaster who drafted the bill.

SEN. O'NEIL withdrew his Conceptual Amendment.

Motion: SEN. O'NEIL moved a conceptual amendment to Line 21 to strike the words "...includes but is not limited to", and insert the words, "...consists of".

Discussion: SEN. SHOCKLEY stated that the bill read better with **SEN. O'NEIL'S** Amendment, but he did not think the bill should be changed if they wanted it to pass.

SEN. CROMLEY agreed with **SEN. SHOCKLEY** that if they are interested in having the bill pass, it should not be amended.

SEN. O'NEIL said that he would not vote for a bill that was vague and would only support the bill with the Conceptual Amendment.

SEN. ELLINGSON said they need to pass the bill. He felt that they should resist the urge to amend good bills that have come over from the House.

SEN. CROMLEY said there wasn't a problem with the bill as written. The second sentence contains additional explanatory information that he did not think detracted from the bill.

SEN. O'NEIL said a lot of things are included when it is not limited to "knowingly approaching within eight feet of a person". He felt the bill was a lot broader than they realized.

Ms. Lane addressed drafting style and explained that the amendment should be to start striking after the word "knowingly" on Line 20 and continue through "knowingly" on Line 22. The crime is stated in the first sentence, the second sentence gives an indication of what the crime consists of, but is not limited to that. She felt that **SEN. O'NEIL** is trying to limit the crime to approaching within eight feet.

CHAIRMAN WHEAT asked about the first Conceptual Amendment. **Ms. Lane** said it did not seem to accomplish anything.

CHAIRMAN WHEAT agreed with **SEN. CROMLEY** and said that the crime is stated in the first sentence.

SEN. O'NEIL further explained the Amendment.

Substitute Motion: **SEN. O'NEIL moved to amend the conceptual amendment by striking everything after the word "person" on Page 1, Line 20, and striking all of Line 21.**

Discussion: **Ms. Lane** explained that the bill as drafted is broader than approaching within eight feet. She said that **SEN. O'NEIL'S** Amendment would set an eight-foot limit.

SEN. PERRY referred to Line 22, and said if a person approaches another person within eight feet to ask consent to an activity, that might be construed as a violation under this bill.

{Tape: 1; Side: B; Approx. Time Counter: 0.4}

SEN. CROMLEY spoke in opposition to the Amendment and said that it took out the principal offense; obstructing or blocking the entry, and only refers to approaching within eight feet.

Vote: **Motion failed 1-11 by voice vote with SEN. O'NEIL voting aye. SEN. MANGAN and SEN. MCGEE voted by proxy.**

Discussion: **SEN. SHOCKLEY** said this isn't about freedom of speech, he felt strongly that people should go about their business without any undue hindrance. He said he will carry the bill if it passes.

SEN. PERRY and **SEN. SHOCKLEY** discussed what makes this case different from any other assault case.

Vote: **Motion carried 8-4 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, and SEN. PERRY voting no. SEN. MANGAN and SEN. MCGEE voted by proxy.**

EXECUTIVE ACTION ON HB 366

{Tape: 1; Side: B; Approx. Time Counter: 7.9}

CHAIRMAN WHEAT summarized the bill. It would exempt a firearm manufactured and retained in Montana from regulation under the Commerce Clause of the U.S. Constitution.

Motion: **SEN. SHOCKLEY moved that HB 366 BE CONCURRED IN.**

Discussion: **SEN. SHOCKLEY** described the Stewart case, which involved someone manufacturing machine guns. The 9th Circuit Court ruled that he could manufacture the guns with parts purchased from around the country as long as they are not sold.

SEN. CROMLEY said the bill relates to the sale of guns and would be considered commerce. If this bill is passed, it may give someone a false hope that they can do this with immunity.

SEN. CURTISS strongly supported the bill because of the people that manufacture black powder guns as a hobby.

CHAIRMAN WHEAT noted that there is already a manufacturer of black powder guns in Big Timber, without this bill.

SEN. PERRY noted that black powder rifles do not fall under firearm laws.

SEN. O'NEIL noted the case of Sheriff Prince from Ravalli County that said a sheriff does not have to do background checks and said he would support the bill.

CHAIRMAN WHEAT said he has had many discussions about whether this bill was designed to set up a legal battle involving Constitutional rights under the State and Federal Constitutions, he has also discussed economic development. He felt this would set the stage for litigation and could not support the bill.

Vote: Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye. SEN. MANGAN and SEN. MCGEE voted by proxy.

Motion/Vote: SEN. ELLINGSON moved that HB 366 BE TABLED AND THE VOTE REVERSED. Motion carried 11-1 by voice vote with SEN. SHOCKLEY voting no. SEN. MANGAN and SEN. MCGEE voted by proxy.

EXECUTIVE ACTION ON HB 474

{Tape: 1; Side: B; Approx. Time Counter: 18.6}

Motion: SEN. CROMLEY moved that HB 474 BE CONCURRED IN.

Discussion: Ms. Lane said that the bill deals with legal notices that a county is required to publish and explained the Amendment.

SEN. SHOCKLEY said he understood from testimony that the paid newspapers did not want any competition.

SEN. ELLINGSON said the counties supported the bill and the paid newspapers opposed it. He said the Committee would have to rely on the counties to use good judgment in the publications they choose to put their legal notices in. He said there were several

good ones: The Queen City News and The Missoula Independent have wide circulation despite the fact that they are free. Advertisers put lots of money into those publications hoping to get purchasers, and that is a good indication that the papers are picked up and read. He said he is in favor of the bill. He asked if they were going to proceed with the Amendment in the absence of **SEN. MCGEE.**

CHAIRMAN WHEAT said he did not think that they should and instructed the Committee to put it back into their folders.

SEN. CURTISS strongly opposed the bill and said it is in the best interests of consumers that advertising is carried in papers of long standing. People get accustomed to looking in certain places for legal ads.

CHAIRMAN WHEAT said that in fairness to **SEN. MCGEE** they would deal with the bill when he gets back.

EXECUTIVE ACTION ON HB 562

{Tape: 1; Side: B; Approx. Time Counter: 27}

Motion: SEN. CROMLEY moved that HB 562 BE CONCURRED IN.

Motion: SEN. MOSS moved that Amendment HB056201 BE CONCURRED IN.

EXHIBIT(jus68a02)

Discussion: Ms. Lane passed out the Amendment and explained it.

SEN. O'NEIL said he would vote against this type of an amendment because it basically says that the king can do no wrong.

Vote: Motion failed 1-11 by voice vote with SEN. MOSS voting aye. SEN. MCGEE voted by proxy.

Discussion: SEN. ELLINGSON asked for more information about the problem and the reason for the bill. **SEN. SHOCKLEY** said the testimony indicated there had never been a problem and if they are made immune, they can buy the insurance very cheaply.

CHAIRMAN WHEAT said it is a good program and they don't currently have a problem. They are trying to prevent future problems.

SEN. CROMLEY said this bill excludes all liability, even gross negligence, and asked whether it includes immunity for intentional misconduct.

{Tape: 2; Side: A; Approx. Time Counter: 0.3}

CHAIRMAN WHEAT noted that the bill says there is no liability on the part of..., and a cause of action of any nature may not be brought against any member, insurer, agent, etc.

Substitute Motion/Vote: SEN. O'NEIL made a substitute motion that HB 562 BE TABLED. Substitute motion carried 9-3 by voice vote with SEN. CROMLEY, SEN. MANGAN, and SEN. MOSS voting no. SEN. MANGAN and SEN. MCGEE voted by proxy.

EXECUTIVE ACTION ON HB 730

{Tape: 2; Side: A; Approx. Time Counter: 2.1}

Motion: SEN. SHOCKLEY moved that HB 730 BE CONCURRED IN.

Discussion: SEN. SHOCKLEY addressed the bill. In the case where the young woman is not willing to tell her parents, he suggested having the child visit a lawyer after hours, give the reasons and discuss the case, then have it filed in court the next day. The judge could accommodate the case "in camera" and either grant or not grant the abortion procedure privately.

He said someone could be for or against the bill, but the legal argument that it is unconstitutional does not exist. The Supreme Court of the United States allows judicial bypass in certain circumstances. The problem in Montana is the tension between the right to privacy, Article 2, Section 10, and persons who are not adults having the same rights as persons that are adults, except that the state may pass statutes that enhance their protection, Article 2, Section 15. He felt that the Supreme Court should have the opportunity to determine that tension. Judicial bypass is reasonable and he would support it. He would like to avoid adding amendments.

*Comment: **SEN. MANGAN** arrives.*

SEN. CROMLEY agreed with **SEN. SHOCKLEY'S** legal analysis. He said he had problems with the bill and would not support it. He said it is the dysfunctional families that have the problems. He said that abortion counseling needs to be done. He objected to the part that says a judge is to find that an abortion is in the best interest of the petitioner. If they have a Catholic judge, and the person is sincere in his religion, they will believe that submitting to an abortion is going to create a sinful result in a person's life. He asked, "How could a sincere Catholic judge ever say that an abortion will be in the best interests of that

person? They would have to say, no". He said that rules out any judge who has strong religious convictions. He stated that he didn't think there is any bill that would work.

SEN. PERRY said that seems contradictory to the justice system, since religion isn't supposed to enter into decisions when it comes to law.

CHAIRMAN WHEAT said he is saying that it creates a huge conflict for the judge placed in that position. They may be able to override the conflict.

SEN. CROMLEY said it may not be a religious belief, it is just the belief on the part of the judge.

SEN. SHOCKLEY said that, practically, it doesn't take long to figure out the Catholic judges, the judge gets paid to make his judgments on the law, not on his moral feelings. He should defer these cases to another judge.

CHAIRMAN WHEAT said he did not like the language, and did not feel that an abortion is in the best interest of the petitioner. He said this ends up being a medical decision, because it might not be in their best interest psychologically or medically. It's not just a quick decision, there needs to be testimony supporting what is in their best interest.

SEN. SHOCKLEY said there are only three places in the state that perform these operations. He predicted that a 14 year-old woman will go in for an abortion without benefit of judicial bypass, she will have remorse and tell her parents, and they will sue and shut down the operation. Doctors are exposing themselves to litigation, and the first lawsuit will shut this down. He said this bill is good for both pro-choice and pro-life.

Motion: SEN. SHOCKLEY moved that Amendment HB073003 BE CONCURRED IN.

EXHIBIT(jus68a03)

Discussion: SEN. SHOCKLEY explained Amendment HB073003.

SEN. CROMLEY asked **SEN. SHOCKLEY** if he was saying that notification of a parent is beneficial in all cases. **SEN. SHOCKLEY** said that the parent is always the best choice, but the amendment he proposed says that if the parents are not available, then it is the opinion of the legislature that the judicial bypass would be in the child's best interest and would enhance the protection of the minor.

CHAIRMAN WHEAT expressed concern that the legislature would be making this finding, when the bill relies on a court to make the determination based on the unique circumstances of each case. He said there may be circumstances where the court finds that parental notification is not in the child's best interest. **SEN. SHOCKLEY** said this provision is addressing the procedure.

SEN. MANGAN felt that the Amendment covers both, because it talks about notification "and" the procedure.

Vote: Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye. SEN. MCGEE voted yes by proxy.

Discussion: SEN. SHOCKLEY explained Amendment HB073005.

EXHIBIT(jus68a04)

{Tape: 2; Side: B; Approx. Time Counter: 5}

Motion/Vote: SEN. O'NEIL moved that segregate paragraphs 4 and 5 BE CONCURRED IN. Motion failed 6-6 by roll call vote with SEN. CURTISS, SEN. ELLINGSON, SEN. LASLOVICH, SEN. MCGEE, SEN. PERRY, and SEN. SHOCKLEY voting aye. SEN. MCGEE voted aye by proxy.

Discussion: CHAIRMAN WHEAT directed the discussion to Paragraphs 1, 2, and 3 of the Amendment.

SEN. ELLINGSON expressed his appreciation to **SEN. SHOCKLEY** for his efforts and said that he felt the state should not involve themselves in these matters. He said he would not support either the Amendment or the bill.

Motion/Vote: SEN. O'NEIL moved that segregate paragraphs 1, 2, and 3 BE CONCURRED IN. Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. ELLINGSON, SEN. LASLOVICH, SEN. MCGEE, SEN. PERRY, and SEN. SHOCKLEY voting aye. SEN. MCGEE voted by proxy.

Discussion: SEN. SHOCKLEY said that 86% of the people going through this procedure have parental support. He stated, "We are saying the 14% who don't, who come from dysfunctional families, the state doesn't care anything about. Those who need it most get nothing".

Motion: SEN. O'NEIL moved that conceptual amendment on Page 2, Line 5, to strike, "...of a pattern" BE CONCURRED IN.

Discussion: **SEN. SHOCKLEY** said he meant to have that in his amendments, and he would have done what **SEN. O'NEIL** is doing. He stated they just want to establish physical abuse, to allow the judge to proceed.

Vote: **Motion carried 9-2 by roll call vote with SEN. MOSS and SEN. WHEAT voting no.**

Motion: **SEN. SHOCKLEY moved that HB 730 BE CONCURRED IN AS AMENDED.**

Discussion: **SEN. SHOCKLEY** said he did not have anything further to say about the bill.

SEN. PERRY and **CHAIRMAN WHEAT** discussed whether the bill concerned the best interests of the child.

Substitute Motion/Vote: **SEN. MANGAN made a substitute motion that HB 730 BE TABLED. Substitute motion failed 6-6 by roll call vote with SEN. CURTISS, SEN. CROMLEY, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting no. SEN. MCGEE voted by proxy.**

Discussion: **SEN. CROMLEY** thanked **SEN. SHOCKLEY** for information he provided because it made him think about judicial bypass. He stated he disagreed with the amendments and the bill. He did not think they would ever get judicial bypass, and he did not feel that it is the solution. He said that it is more of a medical counseling decision.

SEN. SHOCKLEY said if he was a judge, he would probably be in the same situation as **SEN. CROMLEY.** If he could not unbiasedly enforce the law, he would give it to another judge.

SEN. MOSS also thanked **SEN. SHOCKLEY** for the work he had done on the bill. She stated she could not support the bill. She felt that going before a judge would be even more traumatizing. Planned Parenthood counselors and physicians have training in counseling and they have the expertise to help young women. She said there is a process where an adult or a friend is with the young woman to help make that decision and it would be made in a very thoughtful manner. She said it is more appropriately done in a clinic than in a judge's chambers.

SEN. PERRY clarified an earlier point. The judge is not making a decision on the pros and cons of abortion itself, but rather whether or not that abortion is in the best interests of the

petitioner. **CHAIRMAN WHEAT** said he felt that the judge is making a decision about an abortion.

SEN. CURTISS asked the Committee how they would feel if their daughter or granddaughter bled to death overnight because they were not aware of the fact there was an abortion. She said it could happen.

Substitute Motion: SEN. O'NEIL moved that conceptual amendment to strike Subsection 4, Line 29, on Page 1, BE CONCURRED IN.

Substitute Motion/Vote: SEN. MANGAN made a substitute motion that HB 730 BE TABLED. Substitute motion carried 7-5 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting no. SEN. MCGEE voted by proxy.

*Comment: The Committee took a ten minute break. **SEN. MCGEE** arrived. **CHAIRMAN WHEAT** said they would resume Executive Action on HB 474.*

EXECUTIVE ACTION ON HB 474

{Tape: 2; Side: B; Approx. Time Counter: 19.5}

Motion: SEN. CROMLEY moved that HB 474 BE CONCURRED IN.

Motion: SEN. MCGEE moved that Amendment HB047401 BE CONCURRED IN.

EXHIBIT(jus68a05)

Discussion: SEN. MCGEE explained the Amendment.

SEN. MANGAN said he would not vote for it.

Vote: Motion carried 10-2 by voice vote with SEN. CROMLEY and SEN. MANGAN voting no.

Motion: SEN. CROMLEY moved that HB 474 BE CONCURRED IN AS AMENDED.

Discussion: SEN. MOSS stated she received a lot of information from proponents and opponents on this and can't support the bill because she feels it is critical for legal notices to be published with subscription newspapers. She noted that another way people access this information with subscription newspapers is through the Internet.

SEN. CURTISS said it is in the best interest of the consumer that legal ads appear in syndicated papers they have subscribed to.

SEN. O'NEIL said that paid circulation newspapers don't reach everyone in the county. Flathead County requires that legal notices only have to be advertised in one newspaper in the county, and for one contract period the Big Fork Eagle had the contract. He stated that most people don't read that paper. He noted that the number of paid subscriptions are going down, and the readership of free newspapers is going up. He said that the Missoula Independent is also on the Internet, and favored allowing free newspapers to have the advertising.

{Tape: 3; Side: A; Approx. Time Counter: 0.2}

SEN. CROMLEY spoke in favor of the bill and said it wasn't about the paper that had the widest circulation. He said Billings has a paper that only has legal notices in it. He said they could trust the county, as it is in their best interest to put notices in the paper with the widest circulation or they are subject to criticism.

SEN. MANGAN voiced support for the bill. He said it goes back to local control. Local governments will make the appropriate decision for their area.

SEN. PERRY noted the public's right to participate in government. Under Montana law, the legislature cannot reduce a Montanan's rights to know, but in order to get a notice publicized, citizens are required to purchase the publication. He cited lack of communication before the bill was written and suggested they come back in two years with a better bill. He will not support this.

Vote: Motion failed 6-6 by roll call vote with SEN. CROMLEY, SEN. ELLINGSON, SEN. MANGAN, SEN. O'NEIL, SEN. SHOCKLEY, and SEN. WHEAT voting aye.

With no further business, **CHAIRMAN WHEAT** adjourned the meeting.

{Tape: 3; Side: A; Approx. Time Counter: 8}

ADJOURNMENT

Adjournment: 11:15 A.M.

_____
SEN. MIKE WHEAT, Chairman

_____
MARI PREWETT, Secretary

_____
LINDA KEIM, Transcriber

MW/mp/lk

Additional Exhibits:

EXHIBIT(jus68aad0.PDF)

EXHIBIT 1
DATE 3-31-05
SB HB 146

Amendments to House Bill No. 146
3rd Reading Copy

Requested by Representative Dave Gallik

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 29, 2005 (3:28pm)

1. Title, line 5.
Following: "~~MCA;~~"
Insert: "REPEALING SECTION 17-8-231, MCA;"

2. Page 2, line 4.
Following: "3."
Strike: "**Causes of action**"
Insert: "False claims -- procedures -- penalties"

3. Page 2, line 25.
Following: "(2)"
Strike: "A"
Insert: "In a civil action brought under [section 5 or 6], a"

4. Page 3, line 10.
Following: "complaint"
Insert: "or civil action"

5. Page 3, line 19.
Following: "complaint"
Insert: "or civil action"

6. Page 3, line 21.
Following: "complaint"
Insert: "or civil action"

7. Page 3, line 28.
Following: "**actions.**"
Strike: "An"
Insert: "A complaint or civil"
Following: "under"
Strike: "3"
Insert: "5 or 6"

8. Page 4, line 3.
Following: "**and**"
Strike: "**complaint**"
Insert: "civil action"

9. Page 4, line 4.

Following: "violation of"
Insert: "[section 3]"
Following: "a"
Strike: "complaint under [section 3]"
Insert: "civil action"

10. Page 4, line 6.
Following: "**citizen**"
Insert: "**-- civil action**"

11. Page 4, line 8.
Following: "file"
Insert: "a complaint"
Following: "attorney"
Strike: "a brief, including"
Insert: "that includes"

12. Page 4, line 10.
Following: "and"
Strike: "brief"
Insert: "complaint"

13. Page 4, line 11.
Following: line 10
Strike: "complaint under [sections 3 and 5]"
Insert: "civil action"

14. Page 4, line 12.
Following: "filing"
Strike: "a complaint"
Insert: "an action"

15. Page 4, line 13.
Following: the first "a"
Strike: "complaint"
Insert: "civil action"

16. Page 4, line 15.
Following: "a"
Strike: "complaint"
Insert: "civil action"

17. Page 4, line 16.
Following: "a"
Strike: "complaint"
Insert: "civil action"

18. Page 4, line 22.
Following: "files a"
Strike: "complaint"

Insert: "civil action"
Following: "may file a"
Strike: "complaint"
Insert: "civil action"

19. Page 4, line 25.
Following: "citizen's"
Strike: "complaint"
Insert: "civil action"

20. Page 4, line 26.
Page 4, line 27.
Following: "citizen's"
Strike: "complaint"
Insert: "civil action"

21. Page 5, line 7.
Following: "under"
Strike: "3"
Insert: "5 or 6"

22. Page 5, line 10.
Following: "under"
Strike: "3"
Insert: "5 or 6"

23. Page 5, line 14.
Following: "entity"
Insert: "or private citizen"

24. Page 5, line 30.
Following: line 29
Insert: "(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of the state."

25. Page 6, line 2.
Following: "a"
Strike: "complaint"
Insert: "civil action"

26. Page 6, line 12.
Following: "a"
Strike: "complaint"
Insert: "civil action"

27. Page 6, line 13.
Following: "~~purposes~~"
Insert: "and that the court finds was clearly frivolous or

brought solely for harassment purposes"

28. Page 6, line 20.
Following: "pursuant to [section"
Strike: "3"
Insert: "5 or 6"

29. Page 7, line 4.
Following: line 3
Insert: "NEW SECTION. **Section 13. {standard} Repealer.** Section 17-8-231, MCA, is repealed.
{Internal References to 17-8-231: None.}"
Renumber: subsequent section

- END -

APPROVED BY COMM ON JUDICIARY

HOUSE BILL NO. 146

INTRODUCED BY GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; REPEALING SECTION 17-8-231, MCA; ~~REPEALING SECTION 17-8-231, MCA;~~ AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Montana False Claims Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

False claims -- procedures -- penalties

NEW SECTION. **Section 3. ~~Causes of action~~.** (1) A person causing damages in excess of $500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) ~~A~~ In a civil action brought under [section 5 or 6], a court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A private citizen or governmental entity may not file a complaint or civil action

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee related to the officer's or employee's service to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

NEW SECTION. **Section 4. Limitation of actions.** ~~An~~ A complaint or civil action may not be filed under [section ~~3~~ 5006] more than 3 years after the date on which an official of the governmental entity charged with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever

occurs first.

NEW SECTION. **Section 5. Investigation and ~~complaint~~ by government attorney.** A government attorney may investigate an alleged violation of [section 3] and file a ~~complaint under [section 3]~~.

NEW SECTION. **Section 6. Complaint by private citizen.** (1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file a complaint with the government attorney ~~a brief, including~~ that includes a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and ~~brief~~ complaint, the government attorney may elect to file a ~~complaint under [sections 3 and 5]~~ civil action and may, for good cause shown, move the court for extensions of the time for filing ~~a complaint~~ an action.

(3) If the government attorney files a ~~complaint~~ civil action, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a ~~complaint~~ civil action within the time allowed under subsection (2), the private citizen may file a ~~complaint~~ civil action.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had not intervened.

(5) After a private citizen files a ~~complaint~~ civil action, no other private citizen may file a ~~complaint~~ civil action based on the facts underlying the pending action.

NEW SECTION. **Section 7. Dismissal of private citizen's ~~complaint~~.** civil action On the motion of a government attorney, the court may dismiss a private citizen's ~~complaint~~ civil action for good cause. If an intervening government attorney seeks dismissal of a private citizen's ~~complaint~~ civil action, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present evidence at a hearing.

NEW SECTION. **Section 8. Settlement.** An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence at the settlement hearing.

NEW SECTION. **Section 9. Burden of proof -- effect of criminal conviction.** (1) The plaintiff in an action under [section 5026] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section 5026] that involves the same event or events as the criminal proceeding.

NEW SECTION. **Section 10. Distribution of damages and civil penalty.** If an action is settled or the governmental entity or private citizen prevails in an action:

(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(2) filed by a private citizen, except as provided in subsection (3), the private citizen is entitled to between 25% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;

(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of the state."

Division

NEW SECTION. **Section 11. Costs and attorney fees.** A governmental entity in an action in which its government attorney filed a ~~complaint~~ civil action or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a ~~complaint~~ civil action and who prevails in an action that is not settled ~~and that the court finds was clearly frivolous or brought solely for harassment purposes~~ and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

NEW SECTION. **Section 12. Prohibitions on employers -- employee remedies.** (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section 5 or 6].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

~~NEW SECTION. **Section 13. Repealer.** Section 17-8-231, MCA, is repealed.~~

NEW SECTION. Section 13. Repealer. Section 17-8-231, MCA, is repealed.

NEW SECTION. **Section ~~13~~ 14. Applicability.** [This act] applies to causes of action arising after [the effective date of this act].

- END -

if HB 40 (Harris) and HB 146 pass, we do want to repeal 17-8-231 (amended in HB 40), so, if put repealer back in, it's OK for both bills to pass. [would be a problem if don't repeal 17-8-231 and both bills pass].

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-31-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN			X
SEN. DAN McGEE			X
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE	X		
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 146** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Brent Cromley

And, that such amendments read:

1. Title, line 5.
Following: "~~MCA;~~"
Insert: "REPEALING SECTION 17-8-231, MCA;"

2. Page 2, line 4.
Following: "3."
Strike: "**Causes of action**"
Insert: "False claims -- procedures -- penalties"

3. Page 2, line 25.
Following: "(2)"
Strike: "A"
Insert: "In a civil action brought under [section 5 or 6], a"

4. Page 3, line 10.
Following: "complaint"
Insert: "or civil action"

5. Page 3, line 19.
Following: "complaint"
Insert: "or civil action"

6. Page 3, line 21.
Following: "complaint"
Insert: "or civil action"

Committee Vote:
Yes 9, No 3.

7. Page 3, line 28.
Following: "**actions.**"
Strike: "An"
Insert: "A complaint or civil"
Following: "under"
Strike: "3"
Insert: "5 or 6"

8. Page 4, line 3.
Following: "**and**"
Strike: "**complaint**"
Insert: "civil action"

9. Page 4, line 4.
Following: "violation of"
Insert: "[section 3]"
Following: "a"
Strike: "complaint under [section 3]"
Insert: "civil action"

10. Page 4, line 6.
Following: "**citizen**"
Insert: "**-- civil action**"

11. Page 4, line 8.
Following: "file"
Insert: "a complaint"
Following: "attorney"
Strike: "a brief, including"
Insert: "that includes"

12. Page 4, line 10.
Following: "and"
Strike: "brief"
Insert: "complaint"

13. Page 4, line 11.
Following: line 10
Strike: "complaint under [sections 3 and 5]"
Insert: "civil action"

14. Page 4, line 12.
Following: "filing"
Strike: "a complaint"
Insert: "an action"

15. Page 4, line 13.
Following: the first "a"
Strike: "complaint"

Insert: "civil action"

16. Page 4, line 15.
Following: "a"
Strike: "complaint"
Insert: "civil action"

17. Page 4, line 16.
Following: "a"
Strike: "complaint"
Insert: "civil action"

18. Page 4, line 22.
Following: "files a"
Strike: "complaint"
Insert: "civil action"
Following: "may file a"
Strike: "complaint"
Insert: "civil action"

19. Page 4, line 25.
Following: "citizen's"
Strike: "complaint"
Insert: "civil action"

20. Page 4, line 26.
Page 4, line 27.
Following: "citizen's"
Strike: "complaint"
Insert: "civil action"

21. Page 5, line 7.
Following: "under"
Strike: "3"
Insert: "5 or 6"

22. Page 5, line 10.
Following: "under"
Strike: "3"
Insert: "5 or 6"

23. Page 5, line 14.
Following: "entity"
Insert: "or private citizen"

24. Page 5, line 30.
Following: line 29
Insert: "(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative

to each other and to the remedies or penalties available under all other laws of the state."

25. Page 6, line 2.
Following: "a"
Strike: "complaint"
Insert: "civil action"

26. Page 6, line 12.
Following: "a"
Strike: "complaint"
Insert: "civil action"

27. Page 6, line 13.
Following: "~~purposes~~"
Insert: "and that the court finds was clearly frivolous or brought solely for harassment purposes"

28. Page 6, line 20.
Following: "pursuant to [section"
Strike: "3"
Insert: "5 or 6"

29. Page 7, line 4.
Following: line 3
Insert: "NEW SECTION. **Section 13. Repealer.** Section 17-8-231, MCA, is repealed."
Renumber: subsequent section

- END -

SENATE STANDING COMMITTEE REPORT

March 31, 2005

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 324** (third reading copy -- blue) **be concurred in.**

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Jim Shockley

- END -

Committee Vote:
Yes 8, No 4.

681329SC.ssc

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/31/05 BILL NO. HB 324 NUMBER

MOTION: Do Concur

NAME	AYE	NO
SEN. JERRY O'NEIL (R)		X
SEN. LYNDA MOSS (D)	X	
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)	X	
SEN. GERALD PEASE (D)	X	
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)		X
SEN. MICHAEL WHEAT (D), CHAIRMAN	X	
SEN. BRENT CROMLEY (D), VICE CHAIRMAN	X	
SEN. GARY PERRY (R)		X
SEN. JESSE LASLOVICH (D)	X	
SEN. AUBYN CURTISS (R)		X

8 4

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/31/05 BILL NO. HB 366 NUMBER 1

MOTION: Do Concur

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)		X
SEN. GERALD PEASE (D)		X
SEN. JEFF MANGAN (D)		X
SEN. DAN MC GEE (R)	X	
SEN. MICHAEL WHEAT (D), CHAIRMAN		X
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)	X	
SEN. JESSE LASLOVICH (D)		X
SEN. AUBYN CURTISS (R)	X	

5 7

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/31/05 BILL NO. HB 730 NUMBER 1

MOTION: Amendment HB073003.avl

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)		X
SEN. GERALD PEASE (D)		X
SEN. JEFF MANGAN (D)		X
SEN. DAN MC GEE (R)	X	
SEN. MICHAEL WHEAT (D), CHAIRMAN		X
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)	X	
SEN. JESSE LASLOVICH (D)		X
SEN. AUBYN CURTISS (R)	X	

5 7

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/31/05 BILL NO. HB 730 NUMBER 2

MOTION: paragraphs 4 & 5 of Amendment HB073005.avl

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)		X
SEN. GERALD PEASE (D)		X
SEN. JEFF MANGAN (D)		X
SEN. DAN MC GEE (R)	X	
SEN. MICHAEL WHEAT (D), CHAIRMAN		X
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)	X	
SEN. JESSE LASLOVICH (D)	X	
SEN. AUBYN CURTISS (R)	X	

6 6

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/31/05 BILL NO. HB 730 NUMBER 3

MOTION: Paragraphs 1, 2 & 3
Amendment No HB 073005.avl

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)		X
SEN. GERALD PEASE (D)		X
SEN. JEFF MANGAN (D)		X
SEN. DAN MC GEE (R)	X	
SEN. MICHAEL WHEAT (D), CHAIRMAN		X
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)	X	
SEN. JESSE LASLOVICH (D)		X
SEN. AUBYN CURTISS (R)	X	

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3-31-05 BILL NO. HB 730 NUMBER 4

MOTION: Concept. amendment

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)	X	
SEN. GERALD PEASE (D)	X	
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)	X	
SEN. MICHAEL WHEAT (D), CHAIRMAN		X
SEN. BRENT CROMLEY (D), VICE CHAIRMAN	X	
SEN. GARY PERRY (R)	X	
SEN. JESSE LASLOVICH (D)	X	
SEN. AUBYN CURTISS (R)	X	

9 2

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/31/05 BILL NO. HB 730 NUMBER 5

MOTION: To Table

NAME	AYE	NO
SEN. JERRY O'NEIL (R)		X
SEN. LYNDA MOSS (D)	X	
SEN. JIM SHOCKLEY (R)		X
SEN. JON ELLINGSON (D)	X	
SEN. GERALD PEASE (D)	X	
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)		X
SEN. MICHAEL WHEAT (D), CHAIRMAN	X	
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)		X
SEN. JESSE LASLOVICH (D)	X	
SEN. AUBYN CURTISS (R)		X

6 6

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3-31-05 BILL NO. HB 730 NUMBER 6

MOTION: To Table

NAME	AYE	NO
SEN. JERRY O'NEIL (R)		X
SEN. LYNDA MOSS (D)	X	
SEN. JIM SHOCKLEY (R)		X
SEN. JON ELLINGSON (D)	X	
SEN. GERALD PEASE (D)	X	
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)		X
SEN. MICHAEL WHEAT (D), CHAIRMAN	X	
SEN. BRENT CROMLEY (D), VICE CHAIRMAN	X	
SEN. GARY PERRY (R)		X
SEN. JESSE LASLOVICH (D)	X	
SEN. AUBYN CURTISS (R)		X

7 5

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3-31-05 BILL NO. HB 474 NUMBER 1

MOTION: Do Concur as Amended

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)	X	
SEN. GERALD PEASE (D)		X
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)		X
SEN. MICHAEL WHEAT (D), CHAIRMAN	X	
SEN. BRENT CROMLEY (D), VICE CHAIRMAN	X	
SEN. GARY PERRY (R)		X
SEN. JESSE LASLOVICH (D)		X
SEN. AUBYN CURTISS (R)		X
	6	6

PROXY VOTE

I, the undersigned, hereby authorize Senator Crowley to vote my proxy on any issue before the Senate Judiciary Committee held on 3/31/05, 2005.

SENATOR
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator Perry to vote my proxy on any issue before the Senate Judiciary Committee held on 3/31, 2005.

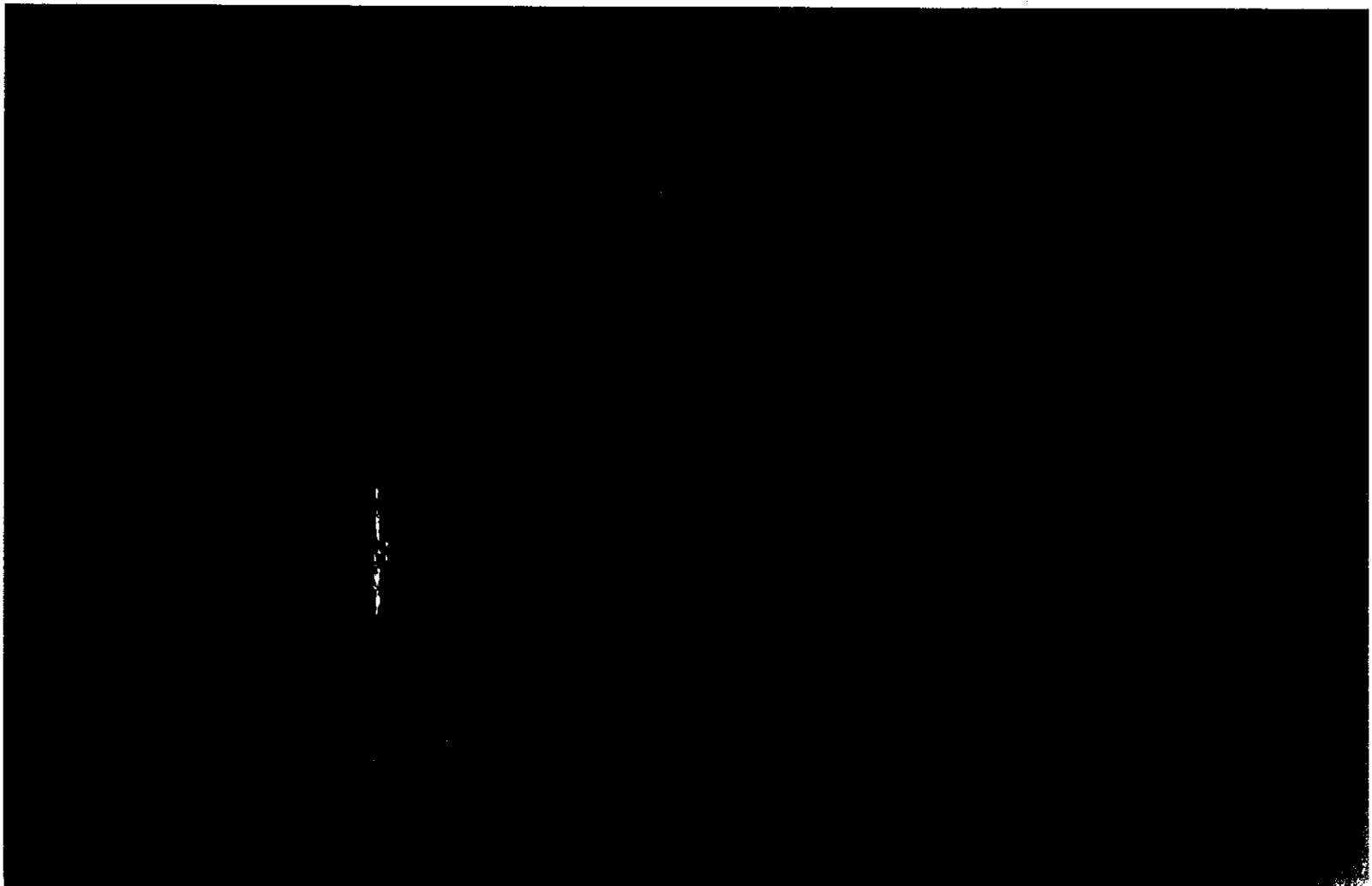
SENATOR
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator ~~WHEAT~~ to vote my proxy on any issue before the Senate JUDICIARY Committee held on 3/31, 2005.

HB 146 – YES

Jon Ellingson
SENATOR
STATE OF MONTANA



MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 146

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on April 14, 2005 at 10:30 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:
Sen. Brent R. Cromley, Chairman (D)
Rep. George Everett (R)
Rep. Dave Gallik (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Sen. Jesse Laslovich (D)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Britt Nelson, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: HB 146, 4/13/2005
Executive Action:

HEARING ON HB 146

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 146,** Civil false claims act.

The Senate Standing Committee Report on HB 146 was provided at the beginning of the meeting.

EXHIBIT(frh80hb0146a01)

REP. CHRISTOPHER HARRIS, HD 66, BOZEMAN commented that the Justice Department had approved SEN. GALLIK'S version of the bill which left only the criminal portions of HB 40. He thought that it would be helpful to make a comparison of what HB 146 would do and what HB 40 would do and make sure that they had not left anything out. He claimed that in the event that REP. GALLIK'S bill superceded his for the civil portion he would not challenge the use of HB 146. Exhibit 2 is a copy of HB 40.

EXHIBIT(frh80hb0146a02)

SEN. CROMLEY asked if the statue addressed in HB 40 covered both civil and criminal claims. An issue which he put forth was that his understanding of the Reverse False Claim Act was that the False Claim Act allowed the State to collect money that was fraudulently claimed. However, the Federal District Court held that the State could not collect money which was withheld. The Reverse False Claim Act said that this applied to all claims in which a corporation or an entity had withheld money which they owed to the State. He clarified that his question was: "Does REP. GALLIK'S bill also correct that situation?"

{Tape: 1; Side: A; Approx. Time Counter: 0 - 3.4}

REP. GALLIK responded that HB 146 was concerned with the repealing section of 17-8-231, MCA. He informed the Committee that this is where the concern was because 17-8-231 was also included within HB 40 and was amended in HB 40. This caught his attention because if they were going to repeal 17-8231 with HB 146 then it would necessarily do away with the entirety of Section 1 of HB 40. He thought that the appropriate thing to do would be to get rid of the repeal.

Valencia Lane interjected that she had drafted the amendments in conjunction with Ally Bovington. According to Ally they wanted to place the repealer back into HB 146, repeal 17-8-231. The reason for this is if they didn't, there would be a conflict

between 17-8-231 and HB 146. With the repealer in place, civil false claims will be addressed by HB 146 and HB 40 will address only criminal claims and liability. She mentioned that it was by the recommendation of the Attorney General's Office to replace the repealer in HB 146 with the intention that HB 40 would then address only criminal claims.

{Tape: 1; Side: A; Approx. Time Counter: 3.4 - 7.5}

CHAIRMAN CROMLEY clarified that in HB 40, Section 1 would be take out and Section 2 would remain.

REP. HARRIS asked where in HB 146 there was the language from Section 1 of HB 40.

Ms. Lane replied that she did not know if the language was identical. She insisted that Section 1 of HB 40 was intended to do the same thing as the entirety of HB 146.

{Tape: 1; Side: A; Approx. Time Counter: 7.5 - 9}

CHAIRMAN CROMLEY observed that HB 146 did not address the reverse false claims on the civil side.

REP. KOOPMAN stated that in Section 3 of HB 146, Subsections D and E, lines 13-18 the bill dealt with the holding of government property.

REP. GALLIK commented it appeared to him that included in HB 146 was Section 1 of HB 40; except he did not see the penalty amount included in HB 40.

SEN. CROMLEY indicated that it was included on the very last line on Page 1 of HB 40: "...or for the purpose of concealing, avoiding, or decreasing an obligation to pay a false or fraudulent claim, bill, account, voucher...."

{Tape: 1; Side: A; Approx. Time Counter: 9 - 12.2}

SEN. SHOCKLEY asked if anyone had discussed the fact that it might be argued that the 17-8-231 might be considered one solution to a false claim and that HB 146 be considered another solution and the State would be forced to take the lesser, which would be 17-8-231.

CHAIRMAN CROMLEY responded that they would have to consider this issue if they left 17-8-231 in existence. He expressed that the potential problem was why it's repeal was being considered.

REP. HARRIS asked if HB 146 was available to the government.

Ms. Lane replied that it was present on Page 4, Lines 4-6, new Section 5. She claimed that the lines were deliberately placed in the bill by the Department of Justice. These lines allow the Department of Justice to act on its own without waiting for a private party to file suit.

REP. HARRIS commented that he thought that HB 40 was better worded when it came to reverse false claims. He recommended they keep the repealer but take some of the language from Subsection B and plug it into HB 146. He claimed they could repeal Section 1 of HB 40 and take some of its language and place it into HB 146.

CHAIRMAN CROMLEY wanted to know if they wanted to have both a procedure for filing a claim and a procedure for a penalty. He thought this might bring in the argument poised by SEN. SHOCKLEY. He did not see the need for a civil penalty if the State or a person could file the claim.

REP. KOOPMAN questioned if withholding money that is owed back to the government rises to the same level as defrauding through a false claim. In HB 146 it would go up to a $10,000 penalty plus double or treble the damages. In the case of withholding money or property owed to the government the penalty would not exceed $2,000 and only double damages. He was inclined to think that they should be the same. He asked REP. HARRIS if he felt that the penalties should be less for withholding government property.

{Tape: 1; Side: A; Approx. Time Counter: 12.2 - 19.8}

CHAIRMAN CROMLEY questioned if REP KOOPMAN was referring to HB 40 and the penalty associated with the bill.

REP. KOOPMAN agreed that he was discussing the penalty from HB 40. He reiterated that the penalty for the reverse false claim in HB 40 would be $2,000 and double damages.

Ms. Lane stated that the question presently was concerning the repealer in HB 146.

CHAIRMAN CROMLEY expressed that his impression was that the gist of HB 40 Section 1 was fairly well covered in HB 146. His inclination was to leave the repealer in place.

REP. GALLIK agreed with CHAIRMAN CROMLEY because he thought that there were other issues given the fact that there were potentially conflicting provisions if they take some of the language out of Section 1, HB 40. This would arise because that

section specifically indicates that the penalty section would be $2,000 plus the amount of damages sustained as opposed to what could potentially happen under the provisions of Section 5, HB 146. He agreed that by following CHAIRMAN CROMLEY'S suggestion they would avoid that potential problem. He expressed concern over the potential double jeopardy issues which might arise if they were not to repeal the section of HB 40. It appeared to him that if they were going to have a penalty, even if it said a civil penalty, that would really be a civil penalty for the purposes of a determination of double jeopardy when that civil penalty is more in dollars than the criminal penalty.

{Tape: 1; Side: A; Approx. Time Counter: 18.2 - 23.9}

REP. HARRIS thought that the language from HB 40, "concealing, avoiding or decreasing an obligation to pay or transmit money or property to a State agency or its contractors" was superior and should be placed in HB 146. He was concerned with the language present in HB 146 which stated "...delivered less property or money than the amount for which the person receives a certificate or receipt." He mentioned that a person might not get a certificate or receipt in every transaction.

CHAIRMAN CROMLEY clarified that REP. HARRIS wanted to take the language he had just read from Hb 40 and put it into Section 3 of HB 146, then repeal Section 1 of HB 40 and leave the civil penalties.

Alley Bovington, Assistant Attorney General with the Department of Justice, noted that in HB 146 under Section 3, Subsection G, was the false claims language. She claimed that if they took REP. HARRIS' language proposal, instead of inserting another subsection under Section 3, they could just strike the language in Subsection G that they did not like and then replace it with the language from HB 40. As far as the discussion they have had about the repeal of Section 1 of HB 40, she explained that they had made that decision because when these bills were up before Senate Judiciary, there was concern that if both of the bills passed there would be conflicting penalty sections. They thought that the easiest way to address that, since HB 146 would address both a false claim and a reverse false claim, was to just have one section of the law dealing with it rather than have two different sections with different penalty provisions.

{Tape: 1; Side: A; Approx. Time Counter: 23.9 - 29.1}

CHAIRMAN CROMLEY clarified that the suggestion was that Section 3, Subsection G of HB 146 would then be stricken and then the language would read: "...knowingly or not knowingly concealing,

avoiding or decreasing an obligation to pay or transmit money or property to a State agency or its contractors."

Ms. Lane asserted that the wording was almost identical with the exception of 'or its contractors.'

REP. HARRIS agreed and suggested that they input 'or its contractors' to Subsection G.

Motion: REP. HARRIS moved that HB 146 BE AMENDED Page 2, Line 22 Following: "entity", Insert: "or its contractors."

Discussion:

REP. HARRIS wanted to be absolutely clear that HB 146 was equally available to governmental prosecutors.

REP. GALLIK affirmed this statement.

SEN. SHOCKLEY directed the Committee to look at Page 4, Line 4 of HB 146, new Section 5.

REP. HARRIS noted that this section contemplated that the citizen moves in and tries to prosecute the false claim and that if an intervening government attorney seeks a dismissal of a private citizens civil action the private citizen must be notified. He claimed that this section indicated that a private citizen had to move first and then a governmental agency could intervene and move second. This language was present in New Section 7.

{Tape: 1; Side: A; Approx. Time Counter: 29.1 - 34.2}

Ms. Lane interjected that New Section 5 was the section which needed to be looked at. She claimed that the Senate Judiciary Committee had specifically addressed that so the Department of Justice could act on its own and not wait to have a citizen bring the charges forth.

Vote: Motion carried unanimously by voice vote.

REP. KOOPMAN read Section 3 of HB 146, Subsection H: "...as a beneficiary of an inadvertent submission of a false claim to the government entity subsequently discovering the false claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim." He expressed concern over the use of the words 'reasonable time.' He also mentioned the standard of 30 days in regard to Section A. He thought that they should make the reasonable time more specific. He was inclined to set a specific standard of 30, 60

or 90 days rather than have it remain 'reasonable time.' He asked REP. GALLIK what the reasoning had been for using that language.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 2.8}

REP. GALLIK explained that the rationale was to gain uniformity with the Federal False Claims Act and those of the states surrounding Montana. The reason why the term was used was because in many areas of the law, when there are situations which would produce facts, particular to each case, it would allow the judge to make a determination based upon the argument of council regarding the reasonableness under those particular facts.

{Tape: 1; Side: B; Approx. Time Counter: 2.9 - 4.1}

SEN. SHOCKLEY viewed the issue as an affirmative defense, where the burden would be on the accused party to say that it was inadvertent. However, there would be a problem of proving when the fraud had been discovered. He was sympathetic to REP. KOOPMAN'S position, but he reiterated that they would have to establish when the defendant had discovered the error and then submitted a false claim.

CHAIRMAN CROMLEY was inclined to agree with SEN. SHOCKLEY because there were circumstances where an employee was indirectly receiving a benefit and there was a question of time of discovery. He felt that leaving a reasonable period was more flexible and better equipped to deal with the varying situations.

{Tape: 1; Side: B; Approx. Time Counter: 4.1 - 6.1}

REP. KOOPMAN followed up by asking about Section 3 Lines 3-5, HB 146. These lines dealt with the times when the court may not assess the $10,000 penalty in addition to the course of double or triple damages. The bill lays out criteria all of which need to be satisfied in order for the court to not automatically levee up to $10,000. He read Section C: "...at the time the person furnished the government attorney with the information about the act a criminal prosecution, civil action or administrative action had not been commenced with respect to the act and the person did not have an actual knowledge of the existence of an investigation into the act." He wondered if Section C was necessary. He thought that they should strike Subsection C.

REP. GALLIK asserted that the wording of this section was also closely related to the Federal False Claims Act. He cited Line 5 which stated, "...and the person did not have actual knowledge of the existence of an investigation into the act." He informed the

Committee that if a person had knowledge of the investigation then they would decide to avoid the penalties. He claimed that this would be a last minute out for the perpetrator to avoid something which they should not be able to do if they had actual knowledge.

{Tape: 1; Side: B; Approx. Time Counter: 6.1 - 11}

REP. KOOPMAN saw it both ways because he thought that they should try to create an incentive for them to come forward and he did not think that they should be rewarded. He mentioned Subsection 5, Line 11: "...private citizen or government entity may not file a complaint or civil action..." and Subsection A: "...against a governmental entity or an officer or employee of a governmental entity arising from conduct of the employee or officer related to the officer or employees service to the government entity." He was unsure why there was language in the bill which indicated that there couldn't be any complaint or civil action against a government employee that was some way involved in the fraud. He wondered about cases of conspiracy where an employee of the government is complicit in defrauding the government and would be sharing in the money that was being falsely collected.

{Tape: 1; Side: B; Approx. Time Counter: 11 - 15.1}

REP. GALLIK again stated that the wording was very similar to the Federal False Claims Act. He thought that the ability to go after someone who is a government employee is found in other sections of law.

REP. KOOPMAN asked if REP. GALLIK was satisfied that the situation which he presented would be fully prosecutable and that the penalties would be sufficient in those situations.

REP. GALLIK stated that he was satisfied.

REP HARRIS felt that REP. KOOPMAN had been making a good point because the wording could confer more immunity than they might intend. He knew that it was based on the Federal False Claims Act but he thought that they could change Section 5, Subsection A to say "...within the scope of the employees duties." This would mean that if the employee was engaged in corruption they would receive no immunity but if they were doing their job then they would be fine.

{Tape: 1; Side: B; Approx. Time Counter: 15.1 - 18.7}

REP. CROMLEY stated that when he first say this section was that it was ruling out a government employee bringing a suite based

upon services within his or her service to the governmental entity. He cited Line 12 which said "...may not file a claim against a government entity." The way it was worded seemed that it was not just an employee but a government entity. When he first saw this he thought that the intent was that an employee who knew about or was involved with fraud could not file a claim. He thought that maybe it should read "against a governmental entity, officer or employee of a governmental entity rising from the complainants."

REP. HARRIS suggested that they strike the language "a government entity or" and add "against a officer or employee of a governmental entity arising from the conduct of the officer or employee within the scope of the officer or employees duties to the government entity."

{Tape: 1; Side: B; Approx. Time Counter: 18.7 - 22.1}

REP. GALLIK noted that it was a policy decision they could make. He claimed that the decision at the time the bill was drafted was that there would not be under this particular cause of action an action against a governmental entity because there were other actions available to just that. This decision was based upon the Federal False Claims Act.

Ms. Bovington informed the Committee that the language needed to be in the bill because there were other statutes in the law which dealt with the government being defrauded by its own employees or officers. She claimed that the section being discussed was trying to avoid the use of the Civil False Claims Act as a process to harass government agencies. She mentioned the problems this would create in the realm of complaint processes. They did not want to open up the False Claims Process to have an overwhelming amount of complaints that could not be processed.

{Tape: 1; Side: B; Approx. Time Counter: 22.1 - 26.5}

CHAIRMAN CROMLEY was unsure of the intent of the subsection. He thought that it was to prevent suites by government employees arising from acts which they were involved in.

Ms. Bovington clarified that the intent was that private citizens may not file complaints against governmental entities although they could file on behalf of a governmental entity.

SEN. SHOCKLEY asked Ms. Bovington to give him an example of how Lines 12-13 on Page 3 would open the litigation door any wider in the guard/prisoner situation.

Ms. Bovington had no opposition to REP. HARRIS' language. She thought that he had captured what the intent of the language had been.

Ms. Lane clarified that REP. HARRIS had two parts to his motion: 1) strike "a governmental entity or" from Line 12, and 2) strike "related to the officer or employees service" and insert "within the scope of the employee or officers duties..." She noted that the Department was not objecting to the second change of language but did not want to lose the governmental entity.

{Tape: 1; Side: B; Approx. Time Counter: 26.5 - 33}

REP. HARRIS referred to Line 11. He wanted to know if the language would preclude the Department of Justice, since it was a governmental entity.

Ms. Lane suggested that at the end of Line 11 after "civil action" they insert "under this act" or "under provisions of Section 1-12." The reason she gave for having governmental entity there was because it was present all the way through the bill.

REP. HARRIS asked if there was an unintended result. He claimed that it could be used to prevent governmental entities from suing.

REP. GALLIK clarified that it meant a governmental entity could not sue in cases limited to subsections A, B and C.

Motion: SEN. SHOCKLEY moved that HB 146 BE AMENDED TO STRIKE "OR GOVERNMENTAL ENTITY" FROM LINE 11, SECTION 5, PAGE 3.

Discussion:

REP. HARRIS agreed with SEN. SHOCKLEY because these restrictions were meant to be on private citizens.

Vote: Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 33 - 41.2}

SEN. HARRIS thought that the change of language might need to be made in other areas of the bill.

Motion: REP. HARRIS moved that HB 146 BE AMENDED TO READ LINES 12-13, PAGE 3 "AGAINST AN OFFICER OR EMPLOYEE OF A GOVERNMENTAL

ENTITY ARISING FROM THE CONDUCT BY THE OFFICER OR EMPLOYEE WITHIN THE SCOPE OF THE OFFICERS OR EMPLOYEES DUTIES TO THE GOVERNMENTAL ENTITY."

Discussion:

REP. KOOPMAN expressed support for REP HARRIS' motion. He wanted to know if by adding "in the scope of," would persons functioning in the areas of their job description in a corrupt manner be protected. He wondered if it was unnecessary to place 'proper' or some other qualifier in order to make it work.

CHAIRMAN CROWLEY agreed with the other changes but did not think that they should get rid of "governmental entity."

REP. HARRIS withdrew his motion without objection.

Substitute Motion/Vote: REP. HARRIS made a substitute motion that HB 146 BE AMENDED TO READ ON PAGE 3, LINE 12 "CONDUCT OF AN OFFICER OR EMPLOYEE WITHIN THE SCOPE OF THE OFFICER'S OR EMPLOYEE'S DUTIES TO THE GOVERNMENTAL ENTITY." The motion carried unanimously by voice vote.

REP. KOOPMAN wanted to know how a private citizen can take action when they have knowledge that another private citizen has defrauded the government. He wanted to know if their standing was because of the fact that they are a tax payer.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 5.2}

SEN. SHOCKLEY claimed that it was the whole purpose of the bill.

REP. HARRIS repeated that the whole purpose of the bill was to allow individual citizens the ability to unveil corruption.

REP. KOOPMAN wanted to see a way in which they could provide incentive to government employees to discover corruption.

REP. GALLIK interjected that there was an incentive. He returned to Page 3, Subsection 5 under D Lines 24-28. He cited that it spelled out what a current or former government employee must do.

REP. KOOPMAN was concerned with the concept of the private party being a co-plaintiff or not being a co-plaintiff or becoming the only complainer. He went through the three scenarios possible. He was not sure why there needed to be a co-plaintiff. He also mentioned that the amount of money available to co-plaintiffs in Section 10 was significantly lower than the amount available in

Subsection 2 which was 25%-50% then in Subsection 1 which was 10%-15% if the individual is not involved in the action as a co-plaintiff. He was confused because in Subsection 2 there was no reference to a plaintiff or a co-plaintiff. He didn't think that there was a need for the co-plaintiff category. He referenced Section 6, Subsection 3.

REP. GALLIK left the room at 11:35 A.M.

{Tape: 2; Side: A; Approx. Time Counter: 5.2 - 14.9}

SEN. SHOCKLEY did not understand the problem. He cited that Page 4, Lines 4-5, Section 5 allowed the government the option to take over the damages.

REP. KOOPMAN reiterated that his question was concerned with the fact that if a person came forward, they would either cooperate with the government and give them the information or the government would decide not to go forward and the individual would take on the issue along with the expenses. In the later case they should receive a higher amount of damages but he restated that there was no need for the co-plaintive category.

{Tape: 2; Side: A; Approx. Time Counter: 14.9 - 19.2}

REP. HARRIS responded that he agreed that there was a lack of coverage for the co-plaintive's reimbursement. However, when it came to the need for a co-plaintive situation he felt that it was needed. He gave an example of the need for the co-plaintiff category.

CHAIRMAN CROMLEY noted that they were missing a section for the reimbursement amount awarded to co-plaintiffs.

Ms. Lane commented that the way the bill was originally drafted in Section 5 anticipated that there would be a complaint first by an individual and then the government could choose to sue. She thought that the intentions of the amendments were to allow the government to proceed on its own without having to wait for an individual to complain.

{Tape: 2; Side: A; Approx. Time Counter: 19.2 - 24}

REP. HARRIS interjected that there was a natural gap between 10%-15% and 25%-50%. He suggested that the gap be used for the percentage interval for awarding a co-plaintiff.

Ms. Bovington agreed with REP. HARRIS. She thought that Section 10 was aimed at only citizen complaints.

CHAIRMAN CROMLEY pointed out that Subsection 1, Line 17 stated "an action filed by a governmental entity."

Ms. Bovington clarified that this only applied to actions filed by the government under Section 6. She noted that Section 5 dealt with the governmental entity finding corruption and filing a complaint.

{Tape: 2; Side: A; Approx. Time Counter: 24 - 27.2}

SEN. SHOCKLEY thought that the figures 25%-50% on Line 25, Page 2 were there so that the judge could decide how much the private citizen deserved in a co-plaintiff situation.

REP. KOOPMAN suggested that they include additional language in Subsection 2 making it clear that it was referring to both individuals filing complaints or are co-plaintiffs. He wanted to include co-plaintiff in Category 2 and broaden the range to 15%-50% so that the judge can make the decision.

Motion: SEN. SHOCKLEY moved that HB 146 BE AMENDED TO READ ON LINE 22, PAGE 5 READ "15%" INSTEAD OF "25%."

Discussion:

SEN. SHOCKLEY claimed that this substitution would allow the judge flexibility to make the decision if a citizen was a plaintiff or a co-plaintiff.

{Tape: 2; Side: A; Approx. Time Counter: 27.2 - 32.5}

Substitute Motion/Vote: REP. HARRIS made a substitute motion on HB 146. REP. HARRIS moved that HB 146 BE AMENDED ON PAGE 5, LINE 21 FOLLOWING "PRIVATE CITIZEN" INSERT "EITHER AS PLAINTIFF OR AS CO-PLAINTIFF." AND ON LINE 22 STRIKE "25%" AND INSERT "15%." Substitute motion carried 5-1 by voice vote with SEN. LASLOVICH voting no.

{Tape: 2; Side: A; Approx. Time Counter: 32.5 - 36.6}

Motion: REP. KOOPMAN moved that HB 146 BE AMENDED ON NEW SECTION 11, PAGE 6 , LINES 18-19. HE MOVED TO STRIKE THE WORDS "AND THAT THE COURT FINDS WERE CLEARLY FRIVOLOUS OR BROUGHT SOLELY FOR HARASSMENT PURPOSES." HE MOVED TO RETURN IT TO THE ORIGINAL LANGUAGE WHICH CAME OUT OF THE HOUSE COMMITTEE.

Discussion:

CHAIRMAN CROMLEY clarified that the movement would allow attorney's fees against the loser in any case. He was opposed to this primarily because he thought it was deterrent to the purpose of the bill.

{Tape: 2; Side: A; Approx. Time Counter: 36.6 - 41}

SEN. DAN WEINBERG, SD 2, WHITEFISH, related a story of a friend who had filed one of the largest false claim judgment in U.S. history. He thought that the whole object of having this section was to create the incentive to bring individuals forward with these judgments so that the State could get its money back. He felt that the previous amendment had taken away some of that incentive. He asserted that if the frivolous language was removed than all of the incentive would be removed and the bill would be useless. He encouraged the Committee to leave the language in the bill.

{Tape: 2; Side: A; Approx. Time Counter: 41 - 46.8}

SEN. KOOPMAN did not think that removing the frivolous language would destroy the bill or take away incentives. He thought that it would create a higher threshold containing the effects of bad press and false claims. He felt that the removal of this language would save money for the State because it would not have to pay out to as many co-plaintiffs.

REP HARRIS opposed the motion on the basis that there were already rules in place that would safe guard the prevention of any false filing.

CHAIRMAN CROMLEY indicated that there might be instances where a case was dismissed even though it was a good claim where an individual deserved to have their fees covered.

REP. GALLIK returned at 11:55 A.M.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 8}

Vote: Motion failed 2-5 by voice vote with REP. KOOPMAN and REP. EVERETT voting aye.

Motion/Vote: REP. HARRIS moved that HB 146 BE ADOPTED AS AMENDED. Motion carried 6-1 by voice vote with REP. KOOPMAN voting no.

Motion/Vote: **REP. GALLIK moved ADJOURNMENT. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 12:00 A.M.

_____
SEN. BRENT CROMLEY, Chairman

_____
BRITT NELSON, Secretary

GE/BC/bn

Additional Exhibits:

EXHIBIT(frh80hb0146aad0.PDF)

HOUSE OF REPRESENTATIVES
ROLL CALL
CONFERENCE COMMITTEE ON HB 146

	PRESENT	ABSENT	EXCUSED
SEN. CROMLEY	X		
SEN. LASLOVICH	X		
SEN. SHOCKELY	X		
REP. EVERETT	X		
REP. KOOPMAN	X		
REP. HARRIS	X		
REP. GALLIK	X		

FREE CONFERENCE COMMITTEE

on Senate Bill 146
Report No. 1, April 13, 2005

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 146** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the Senate:

Sen. Mike Wheat Chair

Sen. Dan McGee

Sen. Jon Ellingson

For the House:

Rep. Diane Rice

Rep. Michael Lange

Rep. John Parker

Rep. Gail Gutsche

Amendment Coordinator

Secretary of the Senate

And, recommend that **Senate Bill 146** (reference copy -- salmon) be amended as follows:

1. Page 10, line 27.
Following: "DEFENDER."
Insert: "The office of appellate defender must be located in Helena, Montana."

2. Page 28, line 4.
Strike: "$310,195"

ADOPT

Amendment # SB 146-1

REJECT

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Insert: "$172,600"

3. Page 86, line 30.
Following: "~~100%~~"
Strike: "25%"
Insert: "50%"

- END -

EXHIBIT 2
DATE 04/14/05
HB 146

AN ACT EXPANDING CIVIL AND CRIMINAL LIABILITY FOR MAKING A FALSE CLAIM TO A STATE AGENCY; AMENDING SECTIONS 17-8-231 AND 45-7-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-8-231, MCA, is amended to read:

"17-8-231. Liability for false claims, records, or statements. (1) (a) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to ~~any~~ a state agency or its contractors forfeits the claim, including any portion that may be legitimate, and ~~in addition~~ is subject to a civil penalty of not to exceed $2,000 plus double the amount of damages sustained by the state as a result of the false claim~~, including all legal costs~~. The court shall also award expenses, costs, and attorney fees.

(b) A person who knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to a state agency or its contractors is subject to a civil penalty of not to exceed $2,000 plus double the amount of damages sustained by the state as a result of the false record or statement. The court shall also award expenses, costs, and attorney fees.

(2) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

~~(2)~~(3) ~~The~~ A forfeiture and ~~the~~ penalty may be sued for in the same suit."

Section 2. Section 45-7-210, MCA, is amended to read:

"45-7-210. False ~~claims~~ claim to public ~~agencies~~ agency. (1) A person commits an offense under this section if the person ~~purposely and~~ knowingly presents for allowance, ~~or~~ for payment ~~any~~, or for the purpose of concealing, avoiding, or decreasing an obligation to pay a false or fraudulent claim, bill, account, voucher, or

writing to ~~any~~ a public agency, public servant, or contractor authorized to allow or pay valid claims presented to a public ~~agencies if genuine~~ agency.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If a false or fraudulent ~~claims are~~ claim is knowingly submitted ~~purposely and knowingly~~ as part of a common scheme or if the value of the claim or the aggregate value of ~~all~~ one or more claims exceeds $1,000, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 3. Effective date. [This act] is effective on passage and approval.

- END -

S.10

EXHIBIT 1
DATE 04/14/05
HB 146

SENATE STANDING COMMITTEE REPORT

March 31, 2005

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 146** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Brent Cromley

And, that such amendments read:

1. Title, line 5.
Following: "~~MCA;~~"
Insert: "REPEALING SECTION 17-8-231, MCA;"

2. Page 2, line 4.
Following: "3."
Strike: "Causes of action"
Insert: "False claims -- procedures -- penalties"

3. Page 2, line 25.
Following: "(2)"
Strike: "A"
Insert: "In a civil action brought under [section 5 or 6], a"

4. Page 3, line 10.
Following: "complaint"
Insert: "or civil action"

5. Page 3, line 19.
Following: "complaint"
Insert: "or civil action"

6. Page 3, line 21.
Following: "complaint"
Insert: "or civil action"

Committee Vote:
Yes 9, No 3.

HB 146
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7. Page 3, line 28.
Following: "actions."
Strike: "An"
Insert: "A complaint or civil"
Following: "under"
Strike: "3"
Insert: "5 or 6"

8. Page 4, line 3.
Following: "**and**"
Strike: "**complaint**"
Insert: "civil action"

9. Page 4, line 4.
Following: "violation of"
Insert: "[section 3]"
Following: "a"
Strike: "complaint under [section 3]"
Insert: "civil action"

10. Page 4, line 6.
Following: "**citizen**"
Insert: "**-- civil action**"

11. Page 4, line 8.
Following: "file"
Insert: "a complaint"
Following: "attorney"
Strike: "a brief, including"
Insert: "that includes"

12. Page 4, line 10.
Following: "and"
Strike: "brief"
Insert: "complaint"

13. Page 4, line 11.
Following: line 10
Strike: "complaint under [sections 3 and 5]"
Insert: "civil action"

14. Page 4, line 12.
Following: "filing"
Strike: "a complaint"
Insert: "an action"

15. Page 4, line 13.
Following: the first "a"
Strike: "complaint"

Insert: "civil action"

16. Page 4, line 15.
Following: "a"
Strike: "complaint"
Insert: "civil action"

17. Page 4, line 16.
Following: "a"
Strike: "complaint"
Insert: "civil action"

18. Page 4, line 22.
Following: "files a"
Strike: "complaint"
Insert: "civil action"
Following: "may file a"
Strike: "complaint"
Insert: "civil action"

19. Page 4, line 25.
Following: "citizen's"
Strike: "complaint"
Insert: "civil action"

20. Page 4, line 26.
Page 4, line 27.
Following: "citizen's"
Strike: "complaint"
Insert: "civil action"

21. Page 5, line 7.
Following: "under"
Strike: "3"
Insert: "5 or 6"

22. Page 5, line 10.
Following: "under"
Strike: "3"
Insert: "5 or 6"

23. Page 5, line 14.
Following: "entity"
Insert: "or private citizen"

24. Page 5, line 30.
Following: line 29
Insert: "(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative

to each other and to the remedies or penalties available under all other laws of the state."

25. Page 6, line 2.
Following: "a"
Strike: "complaint"
Insert: "civil action"

26. Page 6, line 12.
Following: "a"
Strike: "complaint"
Insert: "civil action"

27. Page 6, line 13.
Following: "~~purposes~~"
Insert: "and that the court finds was clearly frivolous or brought solely for harassment purposes"

28. Page 6, line 20.
Following: "pursuant to [section"
Strike: "3"
Insert: "5 or 6"

29. Page 7, line 4.
Following: line 3
Insert: "NEW SECTION. **Section 13. Repealer.** Section 17-8-231, MCA, is repealed."
Renumber: subsequent section

- END -

HOUSE BILL NO. 146

INTRODUCED BY GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; ~~REPEALING SECTION 17-8-231, MCA;~~ REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Montana False Claims Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

NEW SECTION. **Section 3. ~~Causes of action~~ FALSE CLAIMS -- PROCEDURES -- PENALTIES.** (1) A person causing damages in excess of $500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) ~~A~~ IN A CIVIL ACTION BROUGHT UNDER [SECTION 5 OR 6], A court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that

person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A private citizen or governmental entity may not file a complaint OR CIVIL ACTION:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee related to the officer's or employee's service to the governmental entity; SCOPE OF DUTIES

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint OR CIVIL ACTION, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint OR CIVIL ACTION and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

NEW SECTION. **Section 4. Limitation of actions.** ~~An~~ A COMPLAINT OR CIVIL action may not be filed under [section ~~3~~ 5 OR 6] more than 3 years after the date on which an official of the governmental entity charged

with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever occurs first.

NEW SECTION. **Section 5. Investigation and ~~complaint~~ CIVIL ACTION by government attorney.** A government attorney may investigate an alleged violation of [SECTION 3] and file a ~~complaint under [section 3]~~ CIVIL ACTION.

NEW SECTION. **Section 6. Complaint by private citizen -- CIVIL ACTION.** (1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file A COMPLAINT with the government attorney ~~a brief, including~~ THAT INCLUDES a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and ~~brief~~ COMPLAINT, the government attorney may elect to file a ~~complaint under [sections 3 and 5]~~ CIVIL ACTION and may, for good cause shown, move the court for extensions of the time for filing ~~a complaint~~ AN ACTION.

(3) If the government attorney files a ~~complaint~~ CIVIL ACTION, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a ~~complaint~~ CIVIL ACTION within the time allowed under subsection (2), the private citizen may file a ~~complaint~~ CIVIL ACTION.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had not intervened.

(5) After a private citizen files a ~~complaint~~ CIVIL ACTION, no other private citizen may file a ~~complaint~~ CIVIL ACTION based on the facts underlying the pending action.

NEW SECTION. **Section 7. Dismissal of private citizen's ~~complaint~~ CIVIL ACTION.** On the motion of a government attorney, the court may dismiss a private citizen's ~~complaint~~ CIVIL ACTION for good cause. If an intervening government attorney seeks dismissal of a private citizen's ~~complaint~~ CIVIL ACTION, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an

opportunity to oppose the motion and present evidence at a hearing.

NEW SECTION. **Section 8. Settlement.** An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence at the settlement hearing.

NEW SECTION. **Section 9. Burden of proof -- effect of criminal conviction.** (1) The plaintiff in an action under [section ~~3~~ 5 OR 6] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section ~~3~~ 5 OR 6] that involves the same event or events as the criminal proceeding.

NEW SECTION. **Section 10. Distribution of damages and civil penalty.** If an action is settled or the governmental entity OR PRIVATE CITIZEN prevails in an action:

(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(2) filed by a private citizen, except as provided in subsection (3), the private citizen is entitled to between 25% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;

(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited

in the general fund of the governmental entity.

(5) UNLESS OTHERWISE PROVIDED, THE REMEDIES OR PENALTIES PROVIDED BY [SECTIONS 1 THROUGH 12] ARE CUMULATIVE TO EACH OTHER AND TO THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THE STATE.

NEW SECTION. **Section 11. Costs and attorney fees.** A governmental entity in an action in which its government attorney filed a ~~complaint~~ CIVIL ACTION or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a ~~complaint~~ CIVIL ACTION and who prevails in an action that is not settled ~~and that the court finds was clearly frivolous or brought solely for harassment purposes~~ AND THAT THE COURT FINDS WAS CLEARLY FRIVOLOUS OR BROUGHT SOLELY FOR HARASSMENT PURPOSES is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

NEW SECTION. **Section 12. Prohibitions on employers -- employee remedies.** (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section ~~3~~ 5 OR 6].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

~~NEW SECTION. **Section 13. Repealer.** Section 17-8-231, MCA, is repealed.~~

NEW SECTION. **SECTION 13. REPEALER.** SECTION 17-8-231, MCA, IS REPEALED.

NEW SECTION. **Section 14. Applicability.** [This act] applies to causes of action arising after [the effective date of this act].

- END -

Amendments to House Bill No. 146
Reference Copy

Requested by Senator Brent Cromley

For the House Free Conference Committee

Prepared by Valencia Lane
April 14, 2005 (12:48pm)

1. Page 2, line 22.
Following: "entity"
Insert: "or its contractors"

2. Page 3, line 11.
Following: "citizen"
Strike: "or governmental entity"

3. Page 3, line 13.
Following: "employee"
Strike: "related to the officer's or employee's service"
Insert: "within the scope of the officer's or employee's duties"

4. Page 5, line 21.
Following: the first "citizen"
Insert: "either as plaintiff or as coplaintiff"

5. Page 5, line 22.
Following: "between"
Strike: "25%"
Insert: "15%"

- END -